

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,
Appellant,
No. 2209.
Appellees.

THE UNITED STATES OF AMERICA,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,
Appellant,
No. 2210.
Appellees.

THE UNITED STATES OF AMERICA,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,
Appellant,
No. 2211.
Appellees.

Transcript of Record.

VOLUME IV.

(Pages 1201 to 1600 Inclusive.)

FILED

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Appeals from the District Court of the United States for the
District of Idaho, Central Division.

Nos. 2209, 2210 AND 2211.

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Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2209.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2210.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
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(Testimony of Edgar H. Dammarell.)

Q. And the facts stated in this affidavit are substantially the same as you testified to on the stand?

A. Yes, sir.

Q. And they are true?

A. Yes, sir. [1055—725]

Mr. TANNAHILL.—The defendants ask to have the affidavit just identified marked Defendant's Exhibit "I" for identification.

Said affidavit was so marked.

Mr. GORDON.—Q. Did you know who he was representing? A. Yes, sir.

Q. Who?

A. I understood, I believe, that was following the trial, or at least I understood that.

Q. Who did you understand he was representing?

A. I only had a general knowledge of the trial and the way it was going. The newspapers told it.

Q. Well, who did you understand he was representing?

A. Kettenbach, Kester, Dwyer and O'Keefe.

Q. Was Mr. O'Keefe with him at that time that he made that affidavit? A. I don't think so.

Thereupon a recess was taken until two o'clock P. M. [1056—726]

At two o'clock P. M. the hearing was resumed.

**[Testimony of Samuel C. Hutchings, for
Complainant.]**

SAMUEL C. HUTCHINGS, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

(Testimony of Samuel C. Hutchings.)

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. Samuel C. Hutchings.

Q. Where do you reside, Mr. Hutchings?

A. Lewiston, Idaho.

Q. How long have you resided in Lewiston?

A. Since 1877.

Q. Do you know the defendants, William Dwyer, George H. Kester and William F. Kettenbach?

A. Yes, sir.

Q. How long have you known them?

A. I have known them ever since they have been in the country.

Q. What is your occupation at the present time?

A. Patrolman.

Q. At Lewiston? A. Yes, sir.

Q. I will ask you whether you ever had any conversation with the defendants or any of them relative to taking up a timber claim? A. Yes, sir.

Q. When was that, Mr. Hutchings?

Mr. TANNAHILL.—The defendants object to any of the evidence of the witness relative to taking up a timber claim upon the ground that it is irrelevant and immaterial, the entry of the witness not being involved in either of the actions.

Mr. GORDON.—Answer the question. When was this?

A. Some seven or eight years ago.

Q. Now, with which one of the defendants was it you had a conversation? [1057—727]

(Testimony of Samuel C. Hutchings.)

A. I can't say, sir.

Q. It was one of the defendants, though?

A. Yes, sir.

Q. That I have mentioned? A. Yes, sir.

Q. What was said about you taking up a claim?

A. Well, they wanted me to—

Mr. TANNAHILL.—The same objection goes to all of the evidence of the witness, without repeating it.

Mr. GORDON.—Yes.

The SPECIAL EXAMINER.—Let it be noted that the objection will run to all the evidence of the witness.

WITNESS.—They wanted me to take up a timber claim, and I told them I didn't want any.

Mr. GORDON.—Q. And what else did he say?

A. And he said he would give me \$100.00 to take one up, or words to that effect.

Q. And what did you tell him?

A. I told him no, I wouldn't do it.

Q. Well, was anything said between you and the party that you talked with—

A. I told him I had a friend and he might do it.

Q. You told him you had a friend? A. Yes.

Q. And that? A. That he might do it.

Q. Did they ask you to see your friend?

A. I told him I would send my friend down.

Q. And did you? A. Yes, sir. [1058—728]

Q. Who was it? A. Rowland A. Lambdin.

Q. How long after this conversation did you see Mr. Lambdin?

A. I sent him over the same day or the next day.

(Testimony of Samuel C. Hutchings.)

Q. And you told him to go up and see whichever one of these men it was that spoke to you about it?

A. Yes, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. I believe you say, Mr. Hutchings, you didn't know which one of the defendants it was?

A. No, sir, I don't know.

Q. And that conversation was to the effect that you could make \$100.00 out of it? A. Yes, sir.

Q. You don't remember the exact language that was used?

A. Well, if I remember right, they offered me that.

Mr. GORDON.—Q. Offered you what?

A. Offered me \$100.00 to take it up, or that I would get that much out of it, see?

Mr. TANNAHILL.—Q. That you could make that much out of it?

Mr. GORDON.—Q. Now, what was it, Mr. Hutchings?

Mr. TANNAHILL.—Well, just wait a minute; I am not through with the witness.

WITNESS.—I believe they told me that they would give me \$100.00.

Q. You don't remember exactly the language that was used in that conversation, do you?

A. No, sir, I don't remember the exact language.
[1059—729]

Redirect Examination.

(By Mr. GORDON.)

Q. Now, what was the expression that was used?

(Testimony of Samuel C. Hutchings.)

A. Well, they said—I am sure that they said that they would give me \$100.00.

Q. To take up a timber claim? A. Yes, sir.

Mr. GORDON.—That's all.

Mr. TANNAHILL.—That's all. [1060—730]

[Testimony of Wynn W. Peffley, for Complainant.]

WYNN W. PEFFLEY, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Will you state your full name?

A. Wynn W. Peffley.

Q. Where do you reside, Mr. Peffley?

A. Boise, Idaho.

Q. How long have you resided at Boise?

A. I was born in Boise, and resided there about twenty years.

Q. Have you ever lived at Lewiston?

A. Yes, sir.

Q. When did you live at Lewiston?

A. I moved to Lewiston in 1899 and lived there until 1907.

Q. And what was your business seven or eight years ago? A. Mining.

Q. And what is your business now?

A. I am Field Engineer with the U. S. Reclamation Service.

Q. You are in the employ of the Government?

A. Yes, sir.

Q. Do you know Mr. William Dwyer?

(Testimony of Wynn W. Peffley.)

A. By sight; yes, sir.

Q. Do you know Mr. George H. Kester?

A. Yes, sir.

Q. Do you know Mr. William F. Kettenbach?

A. Yes, sir.

Q. All three of the gentlemen I have referred to are joined in this suit, and you know them?

A. Yes, sir.

Q. Did you ever have a talk with either of those gentlemen or all of them relative to a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence [1061—731] of the witness, on the ground that it is irrelevant, incompetent and immaterial, the entry of the witness not being involved in these actions, and it is irrelevant and immaterial.

Mr. GORDON.—Answer the question.

A. I had a conversation regarding a timber claim with Mr. Kester.

Q. George H. Kester? A. Yes, sir.

Q. When was that? A. In the fall of 1903.

Q. And where was it? A. In Lewiston, Idaho.

Q. Now, was it on the street, or where was it?

A. It was on the street; it was on the corner of the Thiessen block.

Q. What was that conversation?

A. I asked him regarding taking up a timber claim, having heard something about it, and he informed me that there was a party leaving in a few days and I could accompany them, and that it would clear me about \$150.00.

(Testimony of Wynn W. Peffley.)

Q. Did you ever have any further talk with him about a timber claim? A. No, sir.

Q. Well, did you enter into an arrangement with him concerning a timber claim?

A. Nothing definite, no, sir.

Q. Was there any other conversation concerning a timber claim with Mr. Kester? A. No, sir.

Q. Do you remember whether you said anything to him or not at that time about taking up a timber claim?

A. Well, I don't remember the exact conversation regarding a timber claim. [1062—732]

Q. Well, did you speak with him about any other people that were interested in taking up a claim?

A. Well, I was speaking for several of my friends when we were talking about a timber claim.

Q. Who were those friends, do you remember?

A. Why, John P. Roos was one, and Louis Baird, and William Monroe, and I don't remember any of the rest; there were several.

Q. Did you ever talk with any of the other defendants after that about a timber claim?

A. A short time—two or three days after that Mr. Dwyer drove up in a buggy and asked me if we were ready to go; the party was going out on the train that afternoon; and I told him that we had decided to let the matter drop, and that was all the conversation we ever had.

Q. Had you ever had any talk with Mr. Dwyer about timber claims before? A. No, sir.

Q. Was he present when you had the talk with Mr.

(Testimony of Wynn W. Peffley.)

Kester? A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Peffley, I believe you said you went to Kester and asked him about taking up a timber claim?

A. Yes, sir.

Q. And he told you that there was some parties leaving in a few days? A. Yes, sir.

Q. And then did you ask him about what you would be able to make out of it?

A. Why, I naturally would; I believe I did.

Q. And he told you that you ought to be able to make \$150.00 out of it?

A. No; he said definitely; he said, "It will be worth \$150.00 [1063—733] to you."

Q. He said that, did he? A. Yes, sir.

Q. Now, you remember testifying at Boise, do you not, Mr. Peffley? A. Last spring?

Q. Yes. A. Yes, sir.

Q. I will ask you if you testified in substance as follows: "Question. I believe you said you went to Mr. Kester and asked him about it?" "Answer. I met him on the street and asked him, yes, sir." "Question. And you asked him something about the value of the claims?" "Answer. Well, I asked him what we would get out of it in case we took claims." "Question. And he said it ought to net you about \$150.00?" "Answer. Yes, he said it would net us about \$150.00." Is that about the facts?

A. Yes, sir.

Q. You don't remember the exact language that

(Testimony of Wynn W. Peffley.)

was used either by yourself or by Mr. Kester?

A. No, I don't remember exactly the words that was said.

Q. But that is the substance of it?

A. He conveyed the idea that we would get \$150.00 out of it.

Redirect Examination.

(By Mr. GORDON.)

Q. Well, why did you go to see Mr. Kester about a timber claim?

A. Well, I understood that they were locating upon, and timber claims were being taken all around, and we were there, and we thought that if it was possible that we would like to get into it and make something out of it. [1064—734]

[Testimony of John P. Roos, for Complainant.]

JOHN P. ROOS, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John P. Roos? A. Yes, sir.

Q. Where do you reside, Mr. Roos? A. Boise.

Q. How long have you resided at Boise?

A. Just about a year.

Q. Where did you reside prior to that time?

A. Lewiston.

Q. How long had you resided at Lewiston?

A. About 26 years.

Q. Are you acquainted with the defendant William Dwyer, and the defendant George H. Kester, and the

(Testimony of John P. Roos.)

defendant William F. Kettenbach? A. I am.

Q. How long have you known those gentlemen?

A. I have known Mr. Kester and Mr. Kettenbach for—oh, practically all my life, and Mr. Dwyer a matter of two or three years—three or four—something of that kind.

Q. Did you ever have a talk with any of those gentlemen that I have named, or all of them, relative to taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim as irrelevant and immaterial, the entry of the witness not being involved in the actions.

Mr. GORDON.—Answer the question.

A. I had a conversation with Mr. Kester.

Q. When? A. I don't remember the date.

Q. Well, as near as you can remember?

A. I couldn't say at all as to the dates. [1065—735]

Q. How long ago?

A. Oh, it must have been 1902 or 1903.

Q. Where did you have this conversation?

A. On the streets in this city.

Q. Will you state that conversation as near as you can remember it?

Mr. TANNAHILL.—The same objection.

WITNESS.—Why, Mr. Kester stopped me on the street and wanted to know if I had been up to a certain section of timber, describing the same by section, township, etc., and I asked Mr. Kester if that was the timber which he and Mr. Kettenbach owned

(Testimony of John P. Roos.)

which laid between Southwick and the river, and he said it was. He wanted to know if I had used my right; I told him no, and he wanted to know what I would take for it.

Mr. GORDON.—Q. Take for what?

A. My right. I told him I didn't know. I asked him what it was worth. He said he would give me \$200.00. I told him my right was worth more than that to me.

Q. Did you take up a timber claim? A. No, sir.

Q. Was there anything else said in that conversation which you had with Mr. Kester that you remember now? A. Not that I remember of, no, sir.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Roos, you knew you couldn't sell your right, did you not, and that Mr. Kester couldn't buy your right? A. Not at that time.

Q. You didn't know whether you could or not?

A. No, sir.

Q. You know now that you couldn't sell your right, and that no [1066—736] one could buy it?

A. Yes, sir.

Q. Now, Mr. Kester asked you if you wanted to take up a timber claim, did he not?

A. He asked me if I wanted to sell my right.

Q. He asked you if you had ever used your right?

A. Yes, sir.

Q. Did he ask you if you wanted to use it?

A. Well, he didn't put it in that way.

(Testimony of John P. Roos.)

Q. You don't remember all that was said, do you, Mr. Roos? A. Well, perhaps not all of it.

Q. It has been a good while ago? A. Yes, sir.

Q. And it is possible that there was more said there that you don't remember? A. Yes, sir.

Q. And that you might have used different language from what you used at this time?

A. No, I believe not. I believe the language is practically the same. It may have varied a little.

Q. And you say this was in 1901, 1902 or 1903?

A. 1902 or 1903.

Q. Now, you say you can remember the exact language that was used during all these years?

A. The reason that I can remember it is because I have testified three or four times.

Q. And you are testifying now in accordance with what you testified at some other time?

A. As my memory goes.

Q. Your memory is very good, is it?

A. How is that?

Q. Your memory is very good, is it? [1067—737]

A. No, nothing exceptional.

Q. Do you think you could remember the exact language that was used eight or nine years ago, if you hadn't testified before? A. No, sir.

Q. Did you ever make any statement to any Government officials?

A. Did I ever make a statement?

Q. Yes?

A. Just prior to the first time that I was taken to Moscow Mr. Johnson stopped me on the street and

(Testimony of John P. Roos.)

asked me to come to his office, which I did two or three days later. He asked me regarding the conversation that I had with Mr. Kester, and I told him there was no conversation; that I knew nothing at all about it; and he told me all that I knew, and I then told him the exact conversation, and he took it down on paper and wanted me to swear to it, or sign it, which I refused to do.

Q. Mr. Johnson first repeated the conversation to you; was that it?

A. He asked me regarding it, and I told him I knew nothing about it, and then he repeated it to me.

Q. And then he repeated it to you?

A. Yes, sir.

Q. And you are testifying now to the conversation that Mr. Johnson repeated to you?

A. I am testifying to the conversation I had with Mr. Kester.

Q. Answer my question: Are you testifying now to the conversation that Mr. Johnson repeated to you?

A. I am testifying to my conversation with Mr. Kester and not what my conversation was with Mr. Johnson.

Q. Didn't you just say that Johnson repeated the conversation to you, and told you all you knew about this? A. He told me all regarding it.

Q. He told you all regarding it? [1068—738]

A. Yes, sir.

Q. Then he repeated this conversation with Mr. Kester to you, didn't he?

(Testimony of John P. Roos.)

A. Along the same lines; perhaps not just exactly.

Q. And that refreshed your memory, didn't it?

A. No, sir.

Q. Your memory has been refreshed on this matter several times, hasn't it? A. No, sir.

Q. But Johnson did repeat the conversation to you, didn't he? A. He outlined it.

Q. Before you told him anything about it?

A. He outlined it and told me regarding it, but he didn't know the exact situation or anything of that kind, or condition.

Q. But he repeated the conversation to you in substance, didn't he?

A. Yes, I believe so, in substance.

Q. The same as you have testified to here?

A. Well, perhaps not the same as I am testifying to it here, but the same in substance.

Q. The same as you are testifying here to, in substance? A. In substance, yes, sir.

Q. This was Miles S. Johnson who talked to you about this, was it? A. Yes, sir. [1069—739]

**[Testimony of Andrew J. Sherburn, for
Complainant.]**

ANDREW J. SHERBURN, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Andrew Sherburn?

A. Andrew J. Sherburn.

Q. Where do you reside, Mr. Sherburn?

(Testimony of Andrew J. Sherburn.)

A. I reside in Clarkson at present.

Q. Clarkson, Washington? A. Yes, sir.

Q. How long have you resided there?

A. I have been there off and on about 15 years, sir.

Q. Do you know the defendant William Dwyer?

A. I do.

Q. And did you ever have any conversation with him relative to taking up a timber claim?

A. Yes, sir.

Q. When was that?

A. That was during some time in the summer of 1904.

Q. And where was that conversation?

A. At Lewiston City.

Q. Now, what place in Lewiston?

A. Well, it was on the streets.

Q. What was said at that conversation?

Mr. TANNAHILL.—We object to any evidence of the witness relative to the conversation with any of the defendants regarding the taking up of a timber claim, upon the ground that no entry of the witness is involved in these actions or either of them, and it is irrelevant and immaterial.

The last question was thereupon repeated by the Reporter.

The SPECIAL EXAMINER.—Just answer the question.

WITNESS.—We were walking along the street below the bank, coming [1070—740] this way. Dwyer says to me, “Sherburn,” he says, “why don’t

(Testimony of Andrew J. Sherburn.)

you go and locate one of these timber claims?" I told him that I had located a timber claim; that is, a homestead and a timber claim; and I had no more rights; and, to use his own language, he says, "Hell, that don't make any difference," he says, "you can take it under an assumed name."

Mr. GORDON.—Q. What did you say?

A. I told him I guessed I would leave it out.

Q. Was that all that was said?

A. That was all.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Dwyer is quite a fellow to joke, is he not, Mr. Sherburn? A. Yes.

Q. As a matter of fact, he knew that you had lived here for a long time, didn't he, Mr. Sherburn?

A. Yes, sir.

Q. Knew that you were acquainted with the Register and Receiver? A. Yes, sir.

Q. Knew that you had proved up on two claims before? A. Yes, sir.

Q. And he knew that you was favorably known and stood reasonably well in the community?

A. It was surprising to me that he should ask me to do such a thing.

Q. I see. Well, as a matter of fact you knew that he did that more in a joke than in any other way, didn't you? A. Yes, I think so.

Mr. TANNAHILL.—You believe so. That's all.
[1071—741]

(Testimony of Andrew J. Sherburn.)

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Sherburn, have you ever sold your timber and stone claim? A. Yes, sir.

Q. To whom did you sell it?

A. I sold it to Kettenbach.

Q. Did you ever sell your homestead?

A. Yes, sir.

Q. Which Kettenbach did you sell it to?

A. I sold it—the homestead I sold to Kettenbach, and the timber claim I sold to the Wisconsin Logging Company. I have sold both of them.

Q. And when did you make that sale of the homestead?

Mr. TANNAHILL.—We object to that as immaterial. The claim is not involved in this proceeding.

Mr. GORDON.—Answer the question.

A. I sold my homestead about—well, some time this spring or along in the winter.

Q. You testified at the former trials of Kester and Kettenbach, did you? A. That what?

Q. You testified at the former trials of Kester and Kettenbach, did you? A. Yes, sir.

Q. You testified at Moscow, didn't you?

A. Yes, sir.

Q. And you didn't testify at that trial that you thought it was a joke, did you?

A. Well, no, I didn't, because I don't recollect whether the question was asked me at all. [1072—742]

[Testimony of F. D. Morrison, for Complainant.]

F. D. MORRISON, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name? A. F. D. Morrison.

Q. Where do you reside, Mr. Morrison?

A. Clarkston, Washington.

Q. How long have you resided at Clarkston?

A. About twelve years.

Q. Do you know the defendant William Dwyer?

A. Yes, sir.

Q. How long have you known him?

A. About twelve years.

Q. Did you ever have any conversation with Mr. Dwyer relative to taking up a timber claim, or engaging in the business of taking up timber claims with him?

Mr. TANNAHILL.—We object to the evidence along this line upon the ground that it is immaterial and irrelevant, no entry of the witness being involved in either of the actions.

The last question was thereupon repeated by the Reporter.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. When was that, Mr. Morison?

A. I think it was in the early summer of '92 or '93, I have forgotten which.

Q. What year was that?

A. 1892 or '93, I have forgotten which.

(Testimony of F. D. Morrison.)

Q. You mean 1902 or 1903? A. 1902 or 1903.

Q. 1902 or 1903? A. Yes. [1073—743]

Q. How many years ago do you mean?

A. Sir?

Q. How many years ago was this?

A. Oh, it must have been ten years ago.

Q. Yes—it wasn't 17 or 18 years ago?

A. Oh, no.

Q. You said 1892 or 1893. A. Oh, yes.

Q. It was in 1902 or 1903, is that correct?

A. Yes, sir; the early summer of 1902, if I recollect right.

Q. Now, where was this conversation? Where did it take place?

A. Oh, in different places; in my house several times.

Q. Well, now, state what the conversation was.

A. Why, Mr. Dwyer wanted me to go in with him and engage in the timber business. He said if I would put up a grubstake and carry a compass or pace, that he got 40 acres out of every 160 he got, and he would give me half of it.

Q. And was that all that he said at that time?

A. Oh, no. No; he came there time and again to me to try and get me to go in with him and take this. He said he was broke like a dog, and he didn't have the price.

Q. And did he say anything about it being easy money?

A. Yes; he said it was like dipping up beer with a cup.

(Testimony of F. D. Morrison.)

Q. Now, what was this arrangement, that you would go in and buy timber like lumber people, or what?

A. All I was to do was to furnish the grubstake, and either pace or carry a compass, and I didn't know what he meant when he wanted me to pace.

Q. And what was he to do?

A. He didn't say. He said he had arrangements made with them for the money. I asked him where the money was coming from. He said he had arrangements with Kester and Billy. [1074—744]

Q. Kester and who?

A. Kester and Billy is the way he spoke of them—Billy Kettenbach. I asked him how we would proceed to procure the patents. He said there was always a lot of damned chair-warmers that you could buy at your own price.

Q. Now, did he tell you what he came to this country for?

A. Yes, sir; he said he came to this God-forsaken country to make a stake out of this white pine timber, and by God he was going to do it.

Q. Did he tell you what business he was in?

A. Cruiser.

Q. Did he tell you with whom he was associated in business? A. Yes, sir—Kester and Billy.

Q. Now, what was that about the 40 acres that he said? I didn't catch that.

A. He said he had arrangements made whereby he got 40 acres out of every quarter section that he procured a patent for—he got 40 acres—and he would

(Testimony of F. D. Morrison.)

split it in two and give me 20 if I would furnish the grubstake.

Q. Was this timber claims he was talking about?

A. Yes, sir.

Q. Did he tell you where he was to get the money?

A. From Kester and Billy.

Q. Did you go into that arrangement with him?

A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Now, Mr. Morrison, you say that this was in 1902 or 1903 you had this conversation?

A. I forget just what date it was, George.

Q. It has been a good while ago, has it not?

A. Yes, it has been about ten years ago or such a matter.

Q. Well, 1902 or 1903 would be about seven or eight years ago. [1075—745]

A. It seems to me it was in the early summer of 1902.

Q. It wasn't earlier than 1902?

A. I ain't clear on the date, because I never had any experience with it.

Q. It is so long ago that you are not very clear as to what was said at the time, was it, Mr. Morrison?

A. Well, what was said, George, has been impressed on my memory pretty thoroughly off and on ever since.

Q. Now, you remember testifying at Boise, do you not? A. Yes, sir.

Q. In February last? A. Yes, sir.

(Testimony of F. D. Morrison.)

Q. I will ask you if you didn't testify as follows:
"Question. Did he tell you with whom he had arranged for the money?" "Answer. Mr. Kester."
"Question. Did he say anything further than just to say Mr. Kester?" "Answer. He called him George." Now, isn't that what you testified to there? A. Probably.

Q. Now, you testified to this before, and isn't this a fact, that you have never mentioned that Dwyer had any connection with Kettenbach regarding it?

(No answer.)

Q. And that was earlier than it is now, and your recollection was clearer then than it is now, wasn't it?

A. Well, I haven't thought of it hardly since, George.

Q. How?

A. I haven't paid any attention to it since.

Q. Then as a matter of fact he didn't say that he had any arrangements with Kettenbach, did he, Mr. Morrison?

A. Kester and Billy is the way he always worded it, and he said "We might as well have some of that money as them sons of bitches to get all of it."
[1076—746]

Q. Well, why didn't you testify at Boise that he said Kester and Billy?

A. Well, you didn't ask me.

Q. Well, weren't you asked who he had the arrangements with?

A. Well, I remember answering that question.

(Testimony of F. D. Morrison.)

Q. You remember answering that question?

A. I remember it, yes, sir, very well.

Q. You say now, Mr. Morrison, that he had the arrangements made with Kester and Billy?

A. Kester and Billy.

Q. Kester and Billy? A. Yes, sir.

Q. You are sure of that, are you?

A. I am sure of that.

Q. Then the stenographer took down your evidence wrong? A. Over there I might not have said it.

Q. You might not have said it?

A. I might not have used Mr. Kettenbach's name.

Q. Oh. Now, Mr. Morrison, you say that Dwyer said he had arrangements made for the money he wanted, didn't he? A. Yes, sir.

Q. And he had arrangements made for someone to locate on the land, or could make arrangements for someone to locate on the land?

A. Could make; yes.

Q. Did he say anything about filing scrip on it?

A. Yes; he said he could file scrip on part of it.

Q. And he said he had arrangements to file scrip on part of it?

A. Well, he didn't say what it was for. He said he had arrangements made for all the money he wanted.

Q. And he was going to take you in and divide up with you, regardless of the fact that he had arrangements made for all the money he wanted? [1077—747]

A. He said he would divide this if I would furnish

(Testimony of F. D. Morrison.)

the grubstake and carry the compass or pace.

Q. You are not on very good terms with Mr. Dwyer, are you?

A. Well, I am not on kissing terms, or anything of that kind.

Q. You and Dwyer haven't been on very good terms for some time?

A. Well, he would speak to me if I would let him, but I forbade him talking to me at all.

Q. When did you forbid him talking to you?

A. Oh, well, you heard me forbid him yourself once.

Q. Well, when was the first time?

A. Oh, five or six years ago.

Q. And you haven't been on good terms since you had some lodge troubles over there, have you?

A. Well, I wasn't in that lodge business at all, I told you before.

Q. You had trouble a long time ago?

A. It wasn't over lodge business that we had trouble over.

Q. Your wife and Mrs. Dwyer had some lodge troubles?

A. I never mixed in that at all. I wasn't in the house during the trial. I had nothing to do with it.

Q. But you haven't been on good terms with Dwyer for a good many years, have you?

A. No, nor I don't want to any more.

Q. You have no use for him?

A. No, not in the least.

Q. Do you think if he loses all his land that Kester

(Testimony of F. D. Morrison.)

and Kettenbach should lose theirs?

A. Well, I have nothing to say in regard to that business. [1078—748]

**[Testimony of Joseph H. Prentice, for
Complainant.]**

JOSEPH H. PRENTICE, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. State your name, Mr. Prentice.

A. Joseph H. Prentice.

Q. Where do you reside, Mr. Prentice?

A. Asotin.

Q. How long have you resided in Asotin?

A. Well, in Asotin town four years.

Q. Where did you reside in 1904?

A. Cloverland, Washington.

Q. Are you acquainted with Charles W. Taylor?

A. Yes, sir.

Q. Did you know him in 1904? A. Yes, sir.

Q. Were you acquainted with Jackson O'Keefe?

A. Yes, sir.

Q. Did you know Mr. Kester, Mr. Kettenbach and Mr. Dwyer, the defendants in this case?

A. Yes, I am acquainted with those three, but only slightly with Mr. Kettenbach.

Q. You took up a timber claim in the spring of 1904, did you not?

A. I believe it was, yes, in the spring of 1904.

Q. Who first spoke with you about taking up this

(Testimony of Joseph H. Prentice.)

timber claim? A. Charles W. Taylor.

Q. Where did this conversation occur?

A. At my place in Cloverland.

Q. How far from your home did Mr. Taylor live?

A. Mr. Taylor was in Asotin then, I believe, I think he was living in Asotin.

Q. How far was that from where you lived?
[1079—749] A. It was fifteen miles.

Q. Did he come to your place of business?

A. Yes, sir, he came to my house.

Q. What did he say to you?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim in so far as it relates to bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions.

Mr. GORDON.—Q. Now, what did he ask you?

A. He asked me if I wanted to make some money.

Q. What else did he say?

A. I told him yes, if it could be done honest, and then he spoke about taking up a timber claim.

Q. State all that was said.

A. I told him I had no money to make entry or prove up, and he says, "Uncle Jack will loan you the money," speaking of O'Keefe, and I says, "Are you sure?" And he says, "Yes. I am getting money from him and Ed. is getting money from him, and he told me he would loan it to you."

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to any

(Testimony of Joseph H. Prentice.)

conversation with Jackson O'Keefe, upon the ground and for the reason that O'Keefe is now deceased, and there is no way to either affirm or deny the statements made, in case any statement is made, and the defendants severally move to strike out the answer of the witness and the statement relative to what Jackson O'Keefe said. It will be understood that this objection goes to all of this line of testimony, without repeating it.

The SPECIAL EXAMINER.—Yes; the stenographer can note that it goes to all that line of testimony.

Mr. GORDON.—Who was Ed.—his brother?

A Ed. was his brother, yes. [1080—750]

Q. Did he tell you whether or not Mr. O'Keefe told him to come to see you?

A. No, I don't think he did; I don't recollect that he did.

Q. Was anything said at that time as to what you were to get out of this timber claim?

A. Well, he told me the thing would take about \$550.00 to go all through it, but Charlie never mentioned what I was to get, but O'Keefe did that.

Q. How long after that did you see O'Keefe?

A. Oh, some few days, when he came up from Asotin I went around to see him.

Q. You went to see him? A. I went to see him.

Q. What was your conversation with O'Keefe?

A. I told O'Keefe what Charlie had said, and he says, "Yes, that is right. I will loan you the money and take your note for everything," he says, "your

(Testimony of Joseph H. Prentice.)

straight note for a year for the filing money and the proving up money and the current expenses going up to see the timber, and also to pay my locator," and I says, "Do you think I can ever sell it," and he says, "Yes, you can sell it"; he says, "In case you get tired of the deal I will give you \$150.00 over and above all expenses."

Q. That was before you went to see the land?

A. That was before I ever went to see the land.

Q. How long after that did you go to see the land?

A. I believe it was next fall or summer.

Q. You went to see the land in October, did you not?

A. I believe it was the next fall, the following fall, yes.

Q. Who went with you to see the land?

A. Jack O'Keefe, Charlie Taylor, Ed. Taylor and Ed. Dammarell.

Q. Dammarell is your brother-in-law, is he not?

A. Yes, sir. [1081—751]

Q. In that conversation you spoke of do you remember whether or not you said to him, suppose you can't pay the note, and was that the time he said he would guarantee you the \$150.00?

A. I think I did mention that suppose I couldn't pay him up when the year was up, that he would take up the note and I was sure of \$150.00 at any rate.

Q. Then who notified you of the time you were to go to view this land? A. I believe it was O'Keefe.

Q. Did he come to see you, or did he—

A. Yes, he was up to Cloverland. He made trips

(Testimony of Joseph H. Prentice.)

back and forth, you know, from Asotin to Cloverland.

Q. And you came down to Lewiston? A. Yes.

Q. And went from Lewiston to Orofino?

A. Orofino.

Q. And from there to the timber?

A. And from there to Pierce City, and from Pierce City to the timber.

Q. Did the same parties you have mentioned before— A. We were all in one party from Asotin.

Q. Who paid your expenses from Asotin to the timber?

A. Well, when we got to Lewiston, as near as I remember, we paid our own fare down from Asotin to Lewiston on the stage, and when we got to Lewiston Jack furnished me with a ticket, and when we got to Orofino Dammarell and I eat together, and as near as I remember I paid one time and he would pay sometimes, and as near as I remember Jack paid sometimes, for all of our meals, and he paid for the horses.

Q. And sometimes you paid for your meals?

A. Yes, I am sure of that; I am sure I paid for my own and sometimes one or two of the other fellows.

Q. Who located you on a claim? [1082—752]

A. William Dwyer.

Q. Where did you first see Dwyer?

A. At Brown's cabin.

Q. That was the first time you ever met him?

A. Yes, sir, the first time I ever met him.

Q. Did he take you into the timber?

(Testimony of Joseph H. Prentice.)

A. Yes, sir.

Q. And when was the first that you ever heard of a location fee?

A. Well, Jack told us on the way up there that there would be a location fee, to pay our locator.

Q. And did he tell you how much it would be?

A. He said it would be \$100.00.

Q. When did you pay that?

A. I paid that the day, I believe it was, that I proved up, or the day I filed; I wouldn't swear which it was. It was the day I proved up.

Q. And you went back, after viewing the land with this party, you returned to your home at Asotin?

A. Cloverland.

Q. Then who notified you of the time you were to make your filing?

A. I think it was O'Keefe, O'Keefe or Charlie Taylor.

Q. And you came down to Lewiston?

A. Yes, sir.

Q. Do you remember who paid that expense?

A. Well, I guess it was Jack; Jack gave me some money.

Q. How much money did he give you?

A. I think about \$20.00.

Q. That was before you left Cloverland?

A. No, he didn't give it to me before I left.

Q. After you got here?

A. Either Asotin or Lewiston, I wouldn't say which.

Q. What were your expenses from Cloverland

(Testimony of Joseph H. Prentice.)

down to Lewiston?

A. Six bits from Asotin and fifty cents from there on down for [1083—753] stage ride.

Q. How long were you at Lewiston before you filed?

A. Four or five, or five or six days, pretty near a week, I know.

Q. Where did you spend your odd moments on that vacation?

A. Why, around town. I was in line the biggest part of the time, it seems to me like.

Q. Did you stay in line over night all those nights?

A. No, we would take turn about, sometimes Dammarell and I would go out on the streets and the Taylor boys would keep their seats and our seats, and then other times they would go, and we would change off like that, you know.

Q. What was the number of your position in line?

A. It was number sixteen before the homesteaders filed, and number four after the homesteaders filed.

Q. In others words, there were sixteen homesteaders ahead of you?

A. No, they weren't all homesteaders; I was number sixteen before the homesteaders filed, then I moved up to number four; that many filed on homesteads.

Q. You were the first timber and stone filer, were you? A. No, there was three ahead of me.

Q. Who stood immediately in front of you, do you remember? A. I do not.

Q. And who behind you?

(Testimony of Joseph H. Prentice.)

A. I don't know that. There is one thing I do remember very distinctly about that feature. There was some men at the rear end, and when I moved up in the line, one of them says, "Say, Prentice, that is your name, isn't it?" And I says, "Yes." And he says, "I will just give you five hundred dollars for that seat of yours," and I have often kicked my behind that I didn't take it. He offered me \$500.00 but I wouldn't take it, and I afterwards understood he wanted to file some scrip.

Q. Who was that gentleman? [1084—754]

A. I got it afterwards in an indirect way, I understood he was an agent of a man by the name of Fitzgerald.

Q. You remember filing on a timber claim, do you?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated April 25, 1904, signed by Joseph H. Prentice. A. That is my signature.

Q. And ask you whether you signed and filed that paper in the land office at Lewiston on or about the date it bears?

A. Yes, sir, I signed that; that is my name.

Q. I show you nonmineral affidavit bearing the same date. Did you sign and file that?

A. I signed that too.

Q. I show you the testimony of Joseph H. Prentice given at trial proof, dated July 11, 1904, and ask you if you signed that?

A. That is my signature too.

Q. I show you the cross-examination of Joseph H.

(Testimony of Joseph H. Prentice.)

Prentice given at the same time. Did you sign that?

A. I signed that. I don't know when I signed those, but those are all my signatures.

Q. Why didn't you take this man's \$500.00, Mr. Prentice?

A. Well, I thought I could make more out of that.

Q. Wasn't it your understanding that you were to get \$150.00?

A. I knew I could get that, but I never promised that I would sell it for that.

Q. Didn't you feel under any obligation to Mr. O'Keefe.

A. No, sir, I did not, because I had given my note.

Q. But you hadn't given any note then.

A. No, but I knew I had to. I was negotiating money from my brother-in-law in the east. My intention was to keep that claim for awhile at least.

Q. Do you know how much timber was in this claim? [1085—755] A. No, I do not.

Q. Do you have any idea?

A. No, I have no idea. I was never in the woods before in my life, only in a little bush, until I got up in there.

Q. Were you employed at that time?

A. I was working around Cloverland.

Q. Doing what?

A. Contracting tree planting, planting apple trees.

Q. Were you employed regularly at that time?

A. No.

Q. Did you have any regular employment?

A. No, I had no regular employment.

(Testimony of Joseph H. Prentice.)

Q. And you didn't have the money with which to take up a timber claim at that time?

A. No, sir, I had not.

Q. Were you married? A. Yes, sir.

Q. Of what did your family consist then?

A. My wife and two children.

Q. Do you remember who prepared this sworn statement that I have shown you?

A. The first paper I filed? My paper that I had to take in?

A. Yes. A. Mr. Smith, I believe.

Q. I. N. Smith? A. Mr. I. N. Smith.

Q. Did you get it at his office?

A. In his office, yes, sir.

Q. Were you directed by someone to go there?

A. O'Keefe told me to go there and my papers would be all fixed up.

Q. You didn't pay any expenses for that paper, did you? A. No, sir. [1086—756]

Q. Do you remember whether or not you paid a filing fee?

A. Yes, I believe that was \$16.00, \$16.00 or \$17.00 or \$18.00, somewhere along there.

Q. Did you pay that, or did O'Keefe pay that?

A. No, he gave me the money.

Q. That was in addition to the \$20.00?

A. That was in addition to that; I think it was about \$20.00 he gave me.

Q. And this filing fee was in addition to that?

A. In addition to that.

Q. Do you remember whether the papers were al-

(Testimony of Joseph H. Prentice.)

ready prepared, waiting for you when you were in Mr. Smith's office?

A. No, I think I had to wait there some little time, but I don't know; I think there was somebody ahead of me, two or three in there.

Q. Are you sure of that?

A. I am sure there was one or two in there besides Mr. Smith.

Q. But I mean, weren't these papers already made out?

A. Well, I had to sit there, but whether they were made out after I went in there I couldn't say, but they were finally given to me.

Q. Did you know why it was you didn't file immediately after viewing the land? A. Yes.

Q. Why?

A. I was told that the state had sixty days' prior right, and we couldn't file until after they had made the state selections.

Q. Now, several months after that you made your final proof? A. Final proof, yes.

Q. Do you remember who notified you of that?

A. I think it was from the land office, I believe it was; I don't know I got—

Q. Didn't O'Keefe notify you?

A. I know I got a paper sent to me with it in.
[1087—757]

Q. Did O'Keefe notify you?

A. Maybe he did too, and I believe I got a notification from the land office.

(Testimony of Joseph H. Prentice.)

Q. Can you be positive whether O'Keefe notified you?

A. O'Keefe kept me posted on everything almost, and he probably did.

Q. And you came to Lewiston from Cloverland, did you? A. Yes, sir.

Q. Who paid your expenses that time?

A. I think I stood my own expenses down as far as Lewiston, I am sure I did; I did in every case, paid my way to Lewiston first, and it was in Lewiston I got the money.

Q. O'Keefe paid you the money after you got here?

A. No. The whole thing, you see, went in; it was counted \$50.00 for expenses for the whole transaction.

Q. Do you remember testifying at the trial of Kester, Kettenbach and Dwyer in February last?

A. Yes.

Q. Do you remember my asking you this question: "Do you remember where you got the money with which to pay that expense?" "Answer. Yes, sir." "Question. Who from?" "Answer. From Jack O'Keefe." "Question. Were you notified of the time that you were to make your proof?" "Answer. Yes, sir." "Question. By whom?" "Answer. O'Keefe." You said nothing about any advertisement or anything of the kind then.

A. Didn't you ask me down there, Mr. Gordon, whether I got a paper or not?

Q. You remember making that answer, don't you?

(Testimony of Joseph H. Prentice.)

A. Yes, sir.

Q. That was correct, wasn't it?

A. O'Keefe did notify me. [1088—758]

Q. (Reading:) "And you went to Lewiston from your home at Cloverland?" "Answer. Yes, sir." "Question. Who paid that expense?" "Answer. Of going from Cloverland down?" "Question. Yes." "Answer. I paid that myself." "Question. And do you remember how much you paid for this land," and so forth, is that correct?

A. That is correct.

Q. How much did you pay at the land office when you made your proof?

A. It was somewhere around \$400.00.

Q. Where did you get that money?

A. O'Keefe.

Q. When?

A. The day I proved up, I am pretty sure.

Q. You met him by arrangement?

A. It was right up there he counted it out.

Q. Where did he count it out to you?

A. In the corridor of the land office, it was then.

Q. Did you see where he got the money from?

A. No, sir, I did not.

Q. And you used that money?

A. To prove up.

Q. Did you go directly from where you and Mr. O'Keefe were where he gave you the money into the land office?

A. I think so; I hadn't enough, I know, when I went in there to prove up on.

(Testimony of Joseph H. Prentice.)

Q. What do I understand by that?

A. Well, he didn't give me enough money to prove up on.

Q. How much short was it?

A. Three or four dollars short.

Q. Did you go out and get that?

A. I went out and got that. [1089—759]

Q. The actual money you paid in the land office was the money you got from O'Keefe?

A. The money I got from O'Keefe, yes, sir.

Q. What did you do with your final receipt when you were given it at the land office, the receipt the receiver gave you?

A. The receipt the receiver gave me?

Q. Yes. A. I think Jack took it.

Q. Did you ever see it after that?

A. I think I have it now; I don't know either whether I have it now or not, but I know I seen it after that.

Q. Do you remember him bringing it back to you?

A. No, I don't think he did.

Q. Do you remember when the inspectors were around that Mr. O'Keefe brought that receipt back to you and told you it was best for you to have it?

A. I know I haven't it now; I have got the note now I know, but I don't think I have the receipt. I think I seen it after that, but I forget whereabouts it was.

Q. Now, do you remember him giving you any other money that day?

A. He gave me my location fee.

(Testimony of Joseph H. Prentice.)

Q. What did he say about that? Was that separate then? A. Yes, he gave me that by itself.

Q. When was that? A. About the same time.

Q. What did he tell you to do with it?

A. He told me to give it to Dwyer.

Q. Do you remember the denomination of the money he gave you? A. A hundred dollar bill.

Q. Was it a new one or an old one?

A. Yes, sir; it was a new one.

Q. And you gave it to Mr. Dwyer?

A. I did. [1090—760]

Q. Did you ever get any money out of the land?

A. I got \$150.00.

Q. When did you get that?

A. I forget just how long it was after that.

Mr. GORDON.—Mr. Tannahill, have you the deed there.

Mr. TANNAHILL.—Yes.

Mr. GORDON.—Q. Well, do you remember how long it was after you made your proof before you got your \$150.00? A. No, I do not.

Q. Well, was it a week, or two weeks?

A. Well, it wasn't very long, I know that.

Q. Whom did you get your \$150.00 from?

A. From Jack O'Keefe.

Q. Did you go up the time the other boys went up and made their deed?

A. I will tell you how that come along. I owed some money on my house, and the lumber company was crowding me for it, and they wanted me to go up there into the mountains, the Blue Mountains and

(Testimony of Joseph H. Prentice.)

file on a homestead and stay there until I had lived there long enough to commute, and then sell the land to the Blue Mountain Company, you see, and they had offered me work there in the mill, and I didn't want to take my wife and children up there, and I thought possibly I could get the money from the east and possibly hold this claim down for awhile and sell it; and my brother was thinking of investing some money in the east, and I wrote to him and asked him if he could help me out, and I asked Jack, and I said, "Jack, now you told me I could get \$150.00 any time I wanted it, and I would like to get that much money, but I don't want to sell it," and Jack says, "All right, I think we can fix it up." And he told me I could sign a bond for a deed, and that is what I thought I did sign until Mr. O'Fallon and Mr. Goodwin convinced me I had signed a warranty deed. [1091—761]

Q. And he gave you \$150.00?

A. Yes, sir, and I went into the lawyer's office and signed that, and didn't read it, and never looked at it, and he said, "Your wife will have to sign it," and I said, "All right," and he gave me \$10.00 there.

Q. You only got \$10.00 then, did you?

A. I only got \$10.00, but my *my* got \$140.00, so it was all the same.

Q. What did you do?

A. I came down here and got a saw and hammer and went up on Normal Hill and worked a day and a half, and then fell twenty feet and broke my arm,

(Testimony of Joseph H. Prentice.)

and I was awful glad I had the money then; it is still stiff.

Q. Did you ever look at the deed you signed?

A. No, sir, I never did; I have never seen that deed from that day to this, only just at a distance.

Q. Well, I will show it to you shortly. The day you made the deed was the day you got the \$150.00?

A. Yes, sir.

Q. And were the Taylor boys up there making deeds the same day you were?

A. No, sir, they were not.

Q. Did you and Dammarell go together?

A. No, sir. I went right in there and signed my name, and never read it, and jumped right on the stage and came to Lewiston to go to work.

Q. And he gave you the note back the day you made this deed?

A. No, I don't think I did get the note back; I don't think I got that note until some time after that; I had to keep after him to get it, and he says, "Oh, the time isn't up yet."

Q. You didn't pay any interest on it, did you?

A. No.

Q. How long after you signed the note did you get it back? [1092—762]

A. Well, I couldn't say, Mr. Gordon; I could not say.

Q. A year?

A. Well, sir, I don't know. I have got no idea of the number of weeks or months that was.

Q. Didn't you feel under obligation to Mr. O'Keefe

(Testimony of Joseph H. Prentice.)

to let him have the first chance for this land?

A. No, I did not; I told Jack, I told him right along that if I can sell it for more than that I am going to do it.

Q. Did you talk that way to him?

A. Yes, I did.

Q. Before you got the \$400.00?

A. No, no, after I got the \$400.00; but he told me I was sure of that much, you know.

Q. Do you remember, Mr. Prentice, making an affidavit before Mr. Goodwin, May 25, 1905?

A. I remember making an affidavit, yes.

Q. Now, did you, after you viewed the timber and before you made final proof, other than the conversation you first had with Mr. O'Keefe, did you have any other conversation about the sale of your land?

A. I don't think it; we might have.

Q. Do you remember having a talk with Mr. O'Keefe about the sale of your claim and he told you you was to get \$150.00 for it?

A. He told me I could get that.

Q. Did he tell you you could or that you would get \$150.00?

A. I think he told me, in fact I am sure he told me I could get that, that he would stand good for me getting \$150.00.

Q. Did he say that you could or that you were to get \$150.00 for your claim?

A. I am sure he said that I could get it.

Q. Do you remember reading this affidavit?

A. I don't think I ever read it.

(Testimony of Joseph H. Prentice.)

Q. Do you sign papers without reading them?
[1093—763]

A. As a rule I do, or did do it up till this here; I never have since.

Q. Do you remember whether you stated to Mr. O'Fallon that it was your understanding that you were to get \$150.00 for the claim, and "I got the money some time after making final proof from Mr. O'Keefe?"

A. Well, sir, I may have made that statement.

Q. Wasn't that true?

A. Mr. O'Fallon and Mr. Goodwin had me pretty near scared to death.

Q. What did they do to scare you?

A. They came up and said they was Department of Justice men, and that there was going to be a big law-suit over this thing, and they asked questions and put the answers in my mouth; but I can't remember.

Q. Wouldn't it be more likely that you would remember what happened six months ago than six years?

A. I may have made that statement, but Jack told me I could get \$150.00 over and above all expenses.

Q. Do you remember having a talk with O'Keefe going up on the train to the timber, about an agreement?
A. With O'Keefe on the train?

Q. Yes.
A. No, I don't recollect it.

Q. Do you remember him telling you that he couldn't stand to the arrangement that he had told Taylor to make with you, that he had information from Kester that that wouldn't be lawful?

(Testimony of Joseph H. Prentice.)

A. Jack said he couldn't make no arrangement, we couldn't have no pre-arranged bargain made; I remember him saying that, but where it was I don't know.

Q. What brought about that conversation?

A. He just told me, just volunteered that information.

Q. Did he tell you you couldn't have a contract or agreement to sell? [1094—764]

A. Yes, he said no contract or agreement could be made to sell it.

Q. Now, did you think you had done anything wrong that Mr. O'Fallon and Mr. Goodwin could frighten you about?

A. Well, I didn't know. I had seen in the papers where there was a whole lot of trouble in Oregon, and I didn't know what I had done.

Q. And you told them the transaction as you remembered it, did you?

A. As I remembered it then; yes, I think so.

Q. Did he give you a round trip ticket from Lewiston to Orofino, as you remember it?

A. Well, now, I don't know whether it was a round trip ticket or not; I don't think it was; I think it was just a ticket up there, one way.

Q. Now, I understood you to say all the money you paid in the land office when you made proof you got from Mr. O'Keefe; that he had given you all but \$4.00 in the hall, and when you went in the land office you were advised it was \$4.00 short, and you went back and received that \$4.00 and returned to the land

(Testimony of Joseph H. Prentice.)

office and made your proof? A. Yes.

Q. Was anything discussed between you and Mr. O'Keefe as to where you should say you got that money, when you made your proof?

A. I think he told me I was to tell them I borrowed it.

Q. Did he tell you that, or did he tell you to say it was your own money?

A. I think he told me I was to tell them I borrowed it from a friend.

Q. Do you remember whether he had a set of the final proof papers out there for you to go over?

A. I don't recollect.

Q. I show you a deed, signed Joseph H. Prentice and Emma A. Prentice, dated July 25, 1904, and ask you if you signed that paper?

A. That is my signature, yes. [1095—765]

Mr. GORDON.—Shall we make the regular stipulation?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—It is stipulated by and between the parties hereto that Joseph H. Prentice and his wife, Emma A. Prentice, made and acknowledged a deed, dated July 25, 1904, conveying to J. O'Keefe, in consideration of \$1.00, lots 1 and 2, and the east half of the northwest quarter of section 18, in township 38 north of range 6 east, Boise meridian, containing 156.60 acres; that said deed was signed in the presence of Edward H. Dammarell and George W. Bailey, and was acknowledged before George W. Bailey, notary public of Asotin, Washington, July 26, 1904,

(Testimony of Joseph H. Prentice.)

and filed for record January 18, 1906, at the request of the Lewiston National Bank, and recorded in Book No. 84 of Deeds, at page 313, in the office of the recorder of Nez Perce County, Idaho.

Mr. GORDON.—Do you remember Mr. Dammarell going with you when you made that deed?

A. No, sir; I do not.

Q. You gave Mr. O'Keefe a note for how much?

A. \$550.00.

Q. And that was after you made your final proof?

A. I forget when I signed that note; I think it must have been, though, after I made my final proof, or that day maybe.

Q. The same day, just after?

A. It was some time right along there.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Joseph H. Prentice, dated April 25, 1904, the nonmineral affidavit of Joseph H. Prentice, the notice for publication, the testimony of Joseph H. Prentice given at final proof, the cross-examination of Joseph H. Prentice at final proof, all of which papers have been identified by the witness, the testimony of the witnesses, given at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated July 11, 1904, certified copy of the [1096—766] patent issued to Joseph H. Prentice, and dated December 31, 1904, all relating to the entry of lots 1 and 2, and the east half of the northwest quarter of section 18, township 38 north of range 6 east, Boise meridian.

Said above mentioned documents were thereupon

(Testimony of Joseph H. Prentice.)

marked by the stenographer as Exhibits 29, 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H, 29I, 29J, 29K, 29L, 29M, and 29N.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of the papers in evidence in so far as they relate to bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions. And the defendants severally object to the admission in evidence of the documents designated as the final proof papers in support of either of the actions, upon the ground and for the reason that they are matters occurring long after the filing of the sworn statement and relating solely to the final proof.

Mr. GORDON.—Q. Mr. Prentice, you never made any other deed than the one I have shown you to this claim? A. No, sir.

Q. You never were asked to? A. No, sir.

Q. From whom did you receive the note that you gave Mr. O'Keefe? A. Jack gave me that back.

Q. When? A. Oh, quite a while after that.

Q. Anything said about it?

A. Well, I asked him for it. It was after Mr. O'Fallon and Mr. Goodwin were up there, and I had thought all along that it was just a bond for a deed that I had signed, and after they said it was a warranty deed then I got after Jack to give me my note back.

Q. Did you accuse him of slipping one over on you?
[1097—767]

(Testimony of Joseph H. Prentice.)

A. Yes, I told him he did.

Q. He was a pretty honorable man, wasn't he?

A. I always thought so.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Prentice, Mr. O'Keefe told you that you would have a year, or until the maturity of that note, to redeem that land and sell it to anyone else, didn't he?

A. Yes, he told me I would have until the note ran out.

Q. And when the note ran out you found you didn't want to redeem it and let it go?

A. I didn't wait for the note to run out.

Q. He told you he wouldn't record the deed until after that time?

A. Yes, sir; he told me that deed wouldn't be recorded, or the bond for a deed.

Q. He told you he wouldn't record that until you found out whether or not you wanted to take up the claim? A. Yes, sir.

Q. What was your conversation with Jack regarding your sale of the land, that is, after you proved up and when you decided to sell it?

A. Well, George, I never decided to sell it.

Q. You never decided to sell it?

A. I told O'Keefe he had told me I could get \$150.-00, and I said I would like to get it to pay off the lumber company for the lumber in my house, and I says, "Is there any way I can get it from you without selling the place?" And he said, "Yes, by giving me

(Testimony of Joseph H. Prentice.)

a bond for a deed," and that is what I supposed I had signed.

Q. And you had no contract or agreement to sell it to him?

A. No, sir; I did not; I knew I could get so much, but I never had told Jack I would sell it for that.

Q. Do you remember of making an affidavit before George H. Rummonds, in Asotin, on January 21, 1907? (Showing witness paper.) [1098—768]

A. Yes, sir; that is my signature.

Q. And the affidavit you made there is substantially in accordance with your evidence here?

A. Yes, sir.

Q. And the statements you made there are true?

A. True, to the best of my knowledge.

Q. And, as I understand you, the affidavit you made when you filed your sworn statement, to the effect that "I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. It was at that time, yes, sir.

Q. And it was true at the time you made your final proof? A. Yes, sir; I intended to keep it.

(Testimony of Joseph H. Prentice.)

Q. And it is still true? A. It is still true.

Q. Mr. Gordon, asked you how you were notified as to the time to make final proof. I will ask you if you don't remember of receiving some copies of the *Pierce City Miner*, a newspaper published at Pierce City, with the notice of the time and place of making final proof in it?

A. Yes. I told Mr. Gordon I got some paper, I don't remember what paper, but I got some paper with the notices in.

Q. And you never understood at the time you filed your sworn statement, or at the time you made final proof, that you had any understanding with Jack O'Keefe or anyone else to sell him the land?

A. No. [1099—769]

Q. You had no understanding that you were to sell it to Kester, Kettenbach or Dwyer?

A. Kester, Kettenbach and Dwyer's name was never mentioned.

Q. And if you had had an opportunity to sell it to anyone for a certain price after you made final proof you would have felt at liberty to sell it to them, would you? A. Yes, I certainly would.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Prentice, who presented that affidavit to you? A. Which one is that?

Q. That Mr. Tannahill has shown you?

A. Why, George Rummonds wrote that out.

Q. Well, who presented it to you? Who was with

(Testimony of Joseph H. Prentice.)

Mr. Rummonds when you talked it over?

A. He used to be prosecuting attorney of Asotin County.

Q. Did anybody talk it over with you? Was Mr. Frank Moore there?

A. Frank Moore was there; Frank Moore and Rummonds.

Q. And they took you down there and talked it over with you? A. Yes, took me up in the office.

Q. What did they tell you they wanted with that affidavit?

A. I don't know that they told me anything they wanted with it.

Q. Did you read that affidavit?

A. They asked me questions, Mr. Moore, I think, asked me the questions, and I told them as near as I could recollect what it was at that time, and George Rummonds typewrote it.

Q. He asked you the questions and you answered them and they wrote the answer down?

A. They wrote it down.

Q. And that is what you signed and swore to?

A. That is what I signed; I didn't swear to that.

Q. Didn't you swear to that affidavit? [1100—770] A. I don't think it.

Q. Were you sworn at all?

A. I don't recollect now.

Q. Did you read it over after it was written out?

A. No, sir, I didn't. Is that sworn to?

Mr. TANNAHILL.—Yes; before George H. Rummonds, Notary Public.

(Testimony of Joseph H. Prentice.)

WITNESS.—I have no recollection of swearing to that at that date, I have not.

Mr. TANNAHILL.—The defendants severally ask that the affidavit just referred to and identified by the witness Joseph H. Prentice be marked Defendants' Exhibit "J," for identification.

Said affidavit was thereupon marked by the stenographer as Defendants' Ex. "J," for identification.
[1101—771]

[Testimony of John H. Long, for Complainant.]

JOHN H. LONG, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name? A. John H. Long.

Q. Where do you reside, Mr. Long?

A. Lewiston.

Q. How long have you resided at Lewiston?

A. About seven or eight years.

Q. Were you living at Lewiston when you filed on a timber claim? A. Yes, sir.

Q. How long had you lived at Lewiston in March, 1903?

A. I couldn't say without figuring it up, but just to estimate it, possibly two or three years.

Q. What was your occupation in March, 1903?

A. Why, at that time I was just working around; I was working first at one thing and then another, and tending to investments, and so forth.

Q. Who were you working for?

(Testimony of John H. Long.)

A. I believe at the time I was working for Mr. Emory or Mr. Colby.

Q. Mr. Fred Emory?

A. Yes; Fred Emory and Mr. Colby.

Q. Were they in partnership at that time?

A. I think they were.

Q. What were you doing for them?

A. Just common labor.

Q. How much were your wages?

A. Why, I think about two and a half a day.

Q. Were you married at that time? A. No, sir.

Q. How old are you now?

A. About thirty-three, I think. [1102—772]

Q. Who first spoke with you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim in so far as it relates to bills No. 388 and 407, upon the ground that the entry of the witness is not involved in those two particular actions, and it is immaterial.

Mr. GORDON.—Q. Who spoke first with you about taking up a timber claim?

A. Mr. Robnett, I believe.

Q. Mr. Clarence W. Robnett? A. Yes, sir.

Q. Now, where were you when he talked with you?

A. Why, I think he called me into the bank there, the Lewiston National Bank.

Q. What part of the bank?

A. He was bank teller then.

Q. Did you talk at the window, or did you go back

(Testimony of John H. Long.)

into the directors' room?

A. Well, part of the time I was at the window, and part of the time in the directors' room. I think he made me a proposition from the bookkeeper's window; he was bookkeeper, that was it.

Q. Did you just happen in there casually, or had someone sent you to him?

A. No; I had spoken to him some time prior to that about taking up a claim, and at that time he didn't have no claims. I guess he hadn't entered into the timber business, or something, and then afterwards he thought he had a good proposition for me and called me in.

Q. Now, what was the proposition?

A. Could I read from a statement I wrote myself?

Q. What is that?

A. Could I read this thing from a statement? I could read it right through, and I have it all written down. [1103—773]

Q. You tell it as you remember it, and then if you have a statement here that you want to read, all right.

A. The proposition he made, as near as I can remember, was that he would locate me on a timber claim, and he would loan me the money with which to prove up with, and he would charge me \$125.00 for location fee, I believe, something like that, and I was to pay \$200, I believe, for the use of this money and the risk, as he explained it, in making this loan. I think he said he had no interest in it excepting that he must have a little bonus, as he called it, or something like that, to insure him a little something for

(Testimony of John H. Long.)

his trouble, and for the man that furnished the money, that loaned this money, that had money to loan for that purpose, *a* wanted a little something out of it.

Q. What else?

A. And I think that this was to be incorporated into a mortgage after the final receipt was received.

Q. Yes. What else?

A. And on the day of proving up, why, we went into the bank.

Q. Who is we?

A. My father and brother and I went into the bank and gave a note one day after date.

Q. One day after date?

A. Yes, a note payable one day after *day*, for the amount of the acreage fee.

Q. Now, what is your father's name?

A. F. M. Long.

Q. Francis M.? A. Francis M. Long.

Q. And your brother's name is what?

A. Benjamin F.

Q. What were you to do with your land after you made your final proof?

A. Well, there was nothing said as to what we was to do with it - [1104—774] any more than he said he might be able to sell it and realize a profit of about \$800.00 on it.

Q. Didn't he guarantee you so much?

A. No, he said, I may sell it for \$800.00.

Q. Was he to have the right to sell it for you?

(Testimony of John H. Long.)

A. No, not particularly; anybody had the right to sell it.

Q. I am speaking now about what your conversation was.

A. I asked him if I had the privilege of selling this to anybody I wanted to, and he said I had.

Q. You didn't have any money to buy a timber claim with, did you? A. What is that?

Q. You didn't have any money with which to buy a timber claim, did you? A. No, not to buy one.

Q. Had you talked this matter over with either Mr. Emory or Mr. Colby? A. I had not.

Q. They didn't tell you to go to see Mr. Robnett?

A. No, sir.

Q. You knew they were dealing in the timber business, didn't you?

A. Why, only to the extent of buying saw logs was all.

Q. Didn't you know they were locating people on timber claims? A. I didn't at that time.

Q. Did you learn afterwards that they were?

A. Why, I heard some time that Mr. Emory located or had been locating, but I don't know that he located anybody.

Q. Now, what arrangement was made about locating you?

A. Why, he said that Mr. Robnett said that Mr. Benton might locate us.

Q. Do you know Mr. Benton, Mr. William B. Benton? A. Yes, sir.

Q. Do you know the relationship he bears to the

(Testimony of John H. Long.)

Kettenbachs? A. Yes, sir. [1105—775]

Q. What is it? A. Cousin, I think.

Q. Cousin of which Kettenbach?

A. Will, I think.

Q. William F. Kettenbach? A. Yes, sir.

Q. Do you know Mr. Joel H. Benton?

A. Yes, sir.

Q. He is the father of William B. Benton, isn't he? A. Yes, sir.

Q. Do you know whether or not he is an uncle of Mr. Kettenbach? A. I think he is.

Q. Are you related to any of them?

A. No, sir.

Q. Are you related to Robnett? A. No, sir.

Q. Who made the arrangements with Mr. Benton for you? A. Mr. Robnett, I believe.

Q. Who notified you of the time to go to the timber? A. Mr. Robnett.

Q. Now, state where you started from to go to the timber, and where you went after you left Lewiston.

A. Well, we started from Lewiston and went to—

Q. Well, now, who was with you?

A. Well, there was Mr. Knight.

Q. Mr. Ed. Knight?

A. Mr. Ed. Knight, and Mr. Benton and my father and my brother and I, and Mr. Harrington, and a stranger was going up in the bunch.

Q. Mr. Ellsworth Harrington? A. Yes, sir.

Q. He is a relative of Robnett's, isn't he?

A. Yes, sir. [1106—776]

Q. What is the relationship there?

(Testimony of John H. Long.)

A. Brother in law.

Q. All of that party went along together?

A. Yes, sir.

Q. What was the first town you came to that you stopped at?

A. Kendrick, I believe, and took a rig across to near Dent.

Q. Who paid the expenses of that trip?

A. My father and I and my brother paid our expenses, our own expenses.

Q. Were they advanced to you by Mr. Robnett?

A. No, sir.

Q. All right. Then you went to Dent. How far beyond Dent did you go?

A. Possibly three or four miles.

Q. How near to the land did you get?

A. About twelve miles.

Q. You weren't within twelve miles of the land?

A. No, sir.

Q. None of you? A. No, sir.

Q. All of the party stopped there?

A. Yes, sir.

Q. That was yourself,—

A. That is, in that party that started to see the land from the house down below Dent there was myself and my father and brother, and Mr. Dent and Mr. Harrington and the stranger I am speaking of, I don't know what his name is now.

Q. This Ellsworth Harrington is Ellsworth M. Harrington? A. Yes, sir.

Q. Why didn't you go to the land?

(Testimony of John H. Long.)

A. We was going through the timber, and Mr. Benton turned around to us and Mr. Harrington, and said whether we expected to go through and [1107—777] see this timber claim, and he told him he certainly did and so he argued that—

Q. Who argued?

A. Benton; he argued that it wasn't necessary to go through to see the timber.

Q. What was the argument he put up?

A. Well, he argued that we had made an attempt to see the timber, and that was all that was necessary, and said that there was some women that didn't even make attempts, and he said he wasn't going to stand for any more of that, they had to make an attempt, he said, to see the timber; and there was considerable argument which I can't remember only the high points.

Q. Didn't he tell you, that under the arrangement under which you were taking up that timber it wasn't necessary for you to see the land?

A. Why, I think probably he did mention that.

Q. What was that arrangement that he referred to? If it was a transaction you were interested in and were going to put up your money to buy it, why wasn't it necessary for you to see it?

A. I don't know.

Q. You were satisfied with not seeing it, and went back?

A. Well, we wasn't satisfied, but we didn't know a thing about the law or the regulations of the land office at that time, and we thought it wasn't neces-

(Testimony of John H. Long.)

sary, and went back.

Q. But, Mr. Long, if you start out with a real estate man to buy a house or a farm, and he gets within twelve miles of the place and stops and says, "you don't need to see that; under the arrangements we have it is not necessary to see it," would you come back and pay him the money for that farm?

A. No, I don't think I would.

Q. So the five of you came back without viewing the land?

A. Yes, sir; Mr. Harrington said he had seen his before.

Q. And for that service you paid Mr. Benton how much? [1108—778]

A. I was to pay him in that mortgage; it was to cover the \$125.00.

Q. What were you paying him that for?

A. That was to be the location fee.

Q. He didn't locate you, did he?

A. Well, he said that we was passing through timber, he said the timber was like certain timber we passed through, and we took his recommendations and actually really took his refusal to take us; he insisted on not taking us, and consequently we had to give in to his argument and go back.

Q. And notwithstanding that you went to the land office when you made your original filing and swore that you had personally examined that land?

A. I couldn't say what I swore to; I don't know.

Q. You signed a sworn statement, did you not?

A. I signed some kind of a statement, yes, sir.

(Testimony of John H. Long.)

Q. I mean at the land office.

A. Yes, sir, at the land office.

Q. And then you and your party returned to Lewiston? A. Yes, sir.

Q. And how long after that did you go to the land office and make your filing? A. I don't remember.

Q. Was it the next day or six months or when?

A. Why, some little time, but I couldn't say just exactly.

Q. It wasn't any great length of time?

A. Oh, no, no great length of time.

Q. I show you timber and stone land sworn statement signed John H. Long, dated March 26, 1903, and ask you whether or not you signed that paper and filed the same in the land office on March 26, 1903?

A. That is my signature.

Q. And that is the paper you signed and swore to?

A. I think so. [1109—779]

Q. Did you notice in reading that paper: "That I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation." When you swore to that you didn't know anything about it, did you?

A. I didn't pay any particular attention to it at all; I don't think I read it.

Q. And as to the other part that is in that paper, you have no recollection of those matters either, have you? A. No, sir.

Q. Who prepared that sworn statement for you?

A. Why, John Nickerson prepared some of them.

Q. John who?

(Testimony of John H. Long.)

A. Nickerson, that is, the first filing papers; I don't know whether it was that one or not.

Q. Now I show you nonmineral affidavit bearing the same date, signed John H. Long. Is that your signature to that paper? A. Yes, sir.

Q. Did Mr. Nickerson also prepare that?

A. Why, if that is one of the first papers.

Q. That you filed with the other one on the same date. A. Yes, he prepared that.

Q. And the notice for publication at the same time?

A. Yes, sir.

Q. I show you the testimony of John H. Long given at final proof, dated June 18, 1903, and ask you if you signed that paper?

A. That is my signature there.

Q. And the cross-examination?

A. That is my signature.

Q. Taken at the same time. That is your signature to all of those papers I have shown you?

A. Yes, sir.

Q. Who told you to go to Mr. Nickerson's office for those papers? [1110—780] A. Mr. Robnett.

Q. Then after you viewed the land or had gone up on your attempt to view it you came back and saw Mr. Robnett before you filed? A. Yes, sir.

Q. Were you given the description of that property, or were you just told to go to Mr. Nickerson's office and get your papers?

A. I think Mr. Nickerson had the description at his office.

Q. Do you know where he got it from?

(Testimony of John H. Long.)

A. No, sir.

Q. Then you didn't take it there? A. No, sir.

Q. Were the papers already prepared when you went to Mr. Nickerson's office?

A. No, I think not; I think he prepared them while I was there.

Q. Did you pay him for preparing those papers, or did Mr. Robnett pay him?

A. No; I paid him.

Q. Are you sure of that?

A. Yes, I am sure I paid him.

Q. How much did you pay him?

A. Well, now, let me see. It may not have been those papers I paid him for; probably I paid him for writing the mortgage, that was it.

Q. You didn't pay him anything for those papers, did you?

A. I don't believe I did; I won't say positive, but I don't think I did.

Q. Then you filed them in the land office?

A. Yes, sir.

Q. Did anyone go to the land office with you?

A. Just us three was all, my father and brother and I.

Q. And before you filed those papers you say you saw Mr. Robnett? Just before you filed them you saw Mr. Robnett, and he told you to go to [1111—781] Nickerson's office?

A. Yes, he told me to go to Nickerson's office.

Q. Where did he tell you that?

A. In the bank building.

(Testimony of John H. Long.)

Q. What part of the bank building?

A. The bookkeeper's window, I think.

Q. And later on you made your final proof, did you not? A. Yes, sir.

Q. Did you see Mr. Robnett between the time you made your original filing and your final proof, to talk with about this claim?

A. Why, I seen him in regard to getting the acreage fee to prove up with.

Q. How much was that?

A. It was about \$400.00.

Q. When was that, relative to the date you made your proof?

A. Why, I think it was the same day on which the proof was made, final proof.

Q. Where did you see him then?

A. Well, I went into the bank.

Q. What part of the bank?

A. The bookkeeper's.

Q. Is there where you transacted your business, or did you go back to the directors' room?

A. No, we didn't go back there.

Q. Your father and brother were with you then?

A. Yes, sir.

Q. And he gave you the money right through the bookkeeper's window? A. Yes, sir.

Q. Was it in cash? A. Yes, sir.

Q. And you say it was \$400.00?

A. Yes, sir. [1112—782]

Q. Did your father and brother get their money at the same time? A. Yes, sir.

(Testimony of John H. Long.)

Q. Did you sign a note then or later?

A. Signed a note then.

Q. For how much? A. Four hundred dollars.

Q. And you went from the bank directly to the land office? A. Yes, sir.

Q. And you paid in the money that Mr. Robnett gave you? A. Yes, sir.

Q. And you made your proof? A. Yes, sir.

Q. Was any discussion had between you and Mr. Robnett as to what you should say at the land office as to where you received that money or whose money it was?

A. I don't think so, that I remember definitely.

Q. Do you remember, when you went to the land office to make your proof, this question was asked you on cross-examination, question 16: "Did you pay out of your own individual funds all the expenses in connection with making your filing, and do you expect to pay for the land with your own money?" "Answer. Yes. Yes." Was that true?

A. I borrowed the money.

Q. The next question: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. I earned it working in saw mill and other places." Was that true? A. No.

Q. Now, was that question discussed between you and Mr. Robnett then?

A. Why, there may have been something said about it, but I don't remember what it was exactly; I can't remember what it was. There was something

(Testimony of John H. Long.)

said about it. He said it was a matter of form and it would probably be better to say it is your own money. He didn't say for us to [1113—783] say that, but something like that; I wouldn't be positive though as to what the conversation was.

Q. They gave you a receiver's receipt at the land office, did they, when you paid that money in?

A. Yes, sir.

Q. What did you do with that?

A. Well, I took the receiver's receipt, and I executed to Mr. Robnett a mortgage covering the \$400.00 which I borrowed and the \$125.00 location fee, and the \$200.00 bonus, and gave him a note for the same, and a mortgage on the land, and I turned over the receipt with the mortgage; he wanted that as security for the thing some way or other.

Q. Did you pay Mr. Benton his location fee, or did you just include that in the mortgage and trust that to Mr. Robnett?

A. I included that in the mortgage and trusted it to Mr. Robnett.

Q. And you gave a promissory note to Mr. Robnett, of the same date you made your proof?

A. Yes, sir.

Q. I show you promissory note, dated Lewiston, Idaho, June 18, 1903, signed John H. Long, payable to Clarence W. Robnett, for \$710.00, in one year, and I will ask you if you signed that note and delivered it to Mr. Robnett the date that it bears?

A. Yes, sir.

Q. The note is endorsed, "Pay to W. F. Ketten-

(Testimony of John H. Long.)

bach, without recourse. Clarence W. Robnett," and "Without recourse on me. W. F. Kettenbach." Will counsel for the defendants stipulate that those signatures on the back are Clarence W. Robnett's and W. F. Kettenbach's?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—We offer that note in evidence, and ask that it be copied into the record.

Said note was thereupon marked by the stenographer as Exhibit 30, and the following is a copy of the same:

[Exhibit No. 30.]

“\$710.00 Lewiston, Idaho, June 18, 1903.

One year after date, without grace, for value received, I [1114—784] promise to pay to the order of Clarence W. Robnett, at THE LEWISTON NATIONAL BANK at Lewiston, Idaho, Seven hundred ten and no/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin, at the rate of one per cent. per month until paid. And if suit be instituted to collect this note, or any part thereof, I promise to pay the additional sum of Seventy dollars as attorney's fees in said suit. P. O. Lewiston.

No. ——. Due ——. JOHN H. LONG.

(Endorsed on face of note): Paid.

(Endorsed on back of note): Pay to W. F. Kettenbach without recourse.

CLARENCE W. ROBNETT.

Without recourse on me.

W. F. KETTENBACH.”

(Testimony of John H. Long.)

Mr. TANNAHILL.—The defendants severally object to the admission of the note in evidence in so far as it relates to bills No. 388 and 407, upon the ground that the entry of the witness is not involved in either of these actions, and it is immaterial.

Mr. GORDON.—Q. Did you turn your receiver's receipt over to Mr. Robnett as soon as you got it?

A. Possibly a few hours after.

Q. And then did you execute any other papers at that time besides that note and the mortgage?

A. Not at that time, but after.

Q. Now, what other paper did you execute?

A. Well, I made one deed in escrow to a timber company; I don't remember the name of the company at the present time. I think a man by the name of Hayden was agent of the company, and—

Q. Wait a minute now. How long was that after you made and executed this mortgage that you have referred to?

A. Well, it was some time after that; I couldn't say.

Q. A month or so?

A. Well, it was more than a month, I think; two or three months, [1115—785] possibly.

Q. The reason I say, the note is dated and the mortgage is dated June 18, 1903, and I have the fragments here of what appears to be an original deed, dated August 3, 1903, and I think the name in that is James M. Hayden. Is that the paper you have reference to?

A. Yes, sir, that is the paper.

(Testimony of John H. Long.)

Mr. TANNAHILL.—Where did you get that, Mr. Gordon?

Mr. GORDON.—I found it somewhere. Didn't you ever see it before?

Mr. TANNAHILL.—No.

WITNESS.—I executed one like that. That is my brother's, and I executed a deed like it, which I have lost or destroyed.

Mr. GORDON.—Q. That was cancelled, was it not? A. Yes, sir, they didn't take up the deed.

Q. With whom did you make that arrangement?

A. Why, there was a man by the name of Gulick, and this man Hayden himself come to see me in regard to this, and I wouldn't be positive, but I think a man by the name of Jansen was along with him at that time.

Q. Did Robnett talk with you about that?

A. No, sir.

Q. I show you an escrow agreement, signed August 3, 1903, made by John H. Long with a man named James N. Hayden. Was that the agreement that went along with that deed that you have referred to? A. Yes, sir.

Mr. GORDON.—We will offer this agreement, identified by the witness, in evidence, and ask that it be copied into the record.

Mr. TANNAHILL.—That is all right.

The stenographer thereupon marked the above-mentioned document as Exhibit 30a, and the following is a copy thereof:

[Exhibit No. 30A.]**“ESCROW AGREEMENT.**

This Agreement, made this 3d day of Aug. 1903, by and between [1116—786] J. H. Long, party of the first part, and J. M. Hayden, Manistee, Mich., party of the second part,

WITNESSETH, That the party of the first part, in consideration of the sum of One Dollar (\$1.00) to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has placed in escrow, in THE LEWISTON NATIONAL BANK, of Lewiston, the following deed, to-wit: S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 24 Town. 39, N.—R. 3 East B. M.

Said deed to be delivered by said bank to J. M. Hayden, Manistee, Mich., or his assigns, on the payment of \$1.00 per M. for white pine and fifty cents (50 cts.) per M. for Red fir and cedar, price not to go below eleven hundred and thirty dollars \$1130.00 on or before Nov. 1st, 1903. And it is hereby further agreed and understood that in the event that said J. M. Hayden fails to pay the amount above specified on or before the 1st day of Nov. 190 , then and in that event the said bank shall return the deed above described to J. H. Long party of the first part on his demand and this agreement shall be null and void. If a sale is made by the second party, he shall receive as special compensation for said sale five (5) per cent. commission of the price above named.

(Testimony of John H. Long.)

Time is the essence of this agreement.

JOHN H. LONG.

JAMES M. HAYDEN.

Witnesses:

E. D. THOMAS.

C. O. WASHBURN.

THE LEWISTON NATIONAL BANK of Lewiston agrees to accept this escrow, according to the terms above stipulated.

Cashier." [1117—787]

Mr. GORDON.—Q. Now, why wasn't that carried out? A. I couldn't say.

Q. Whom did you deliver that to, and where did you leave the escrow,—at the Lewiston National Bank?

A. No, sir, I left that at the Commercial Trust Company bank.

Q. What was this Mr. Jansen's name, Christian name?

A. I think he was commonly known as Charlie Jansen.

Q. Wasn't he at that time a partner of Mr. Robnett's? A. I couldn't say.

Q. Didn't you know he was associated with Mr. Robnett in business? A. No, sir.

Q. Wasn't this Mr. Gulick also associated with Mr. Robnett in business?

A. I didn't know at the time; I heard afterwards he was.

Q. Didn't you know that Mr. Jansen was associated

(Testimony of John H. Long.)

with him in business?

A. No, sir, I didn't know that.

Q. You say you didn't know why that transaction didn't go through? A. No, sir.

Q. And those papers were just returned to you?

A. Yes.

Q. Without any remark whatever?

A. Yes, sir.

Q. Now, I find a deed here, signed John H. Long, and acknowledged before D. Needham, Notary Public, dated July 21, 1904, to William F. Kettenbach, by John H. Long, consideration \$815.00, which appears to have been cancelled. Do you remember executing that paper? A. Yes, sir.

Q. For whom did you execute that?

A. William Kettenbach.

Q. What was the transaction relative to your executing that paper? [1118—788]

A. Well, at the expiration of the term of the mortgage, at the end of the one year, why I received notice from Mr. Kettenbach, stating that he had purchased my mortgage and note, and wanted me to come in and settle, and at that time I was busy and I didn't think I would pay any attention to it, and after discussing the matter with people who I supposed to be my friends,—I don't know who they were now,—they advised me that I had better do something to get shut of the mortgage, that there may be a law in this State holding my property afterwards, if I should get any, holding it good for that mortgage, if I didn't pay it and settle it some way.

(Testimony of John H. Long.)

Q. Who were these people that advised you?

A. I think I talked to a fellow by the name of R. S. Anderson that used to be around here. And so I told Mr. Kettenbach then, I wrote Mr. Kettenbach, —I was busy at the time,—and I told him that I had seen the land and I didn't regard it as worth the amount of the mortgage, and in order to settle, if he would give me the amount of money I had been out on it, he could have it, I would make him a deed for it, and I figured this to be about \$30.00, that I was out in expense going to see the land, making the effort to sell it, and then I paid the filing fee of \$11.00, and the first fee of \$8.00; and so he wrote or seen me afterwards,—I think he seen me afterwards,—and said he would take that proposition, provided I would knock off a few dollars to pay for filing the papers, and I considered that better than nothing, so I made him a deed. And I went up to Mr. Needham to have this deed made that you just exhibited, and in making the description, I didn't have the final receipt, and so I didn't have the description accurate. I believe part of the land was described in lots, and he described it without regard to lot, and so Mr. Kettenbach gave me the final receipt then which he had in his possession, and told me to go back up to Mr. Needham's and get another deed drawn and let the description be taken from that.

Q. This deed that you have is the one that was concerned at that time?

A. Yes, sir, at that time; I took that deed and just— [1119—789]

(Testimony of John H. Long.)

Q. I show you a deed, signed John H. Long, dated July 21, 1904, and acknowledged on that day before D. Needham, and conveying certain property to William F. Kettenbach. Is that the deed that you have referred to as having made in place of the one that was cancelled? A. Yes, sir.

Mr. GORDON.—Put that into a stipulation, will you?

Mr. TANNAHILL.—It is stipulated and agreed by and between the parties hereto that John H. Long, on July 21, 1904, conveyed to William F. Kettenbach, by a warranty deed, consideration \$1.00, lot 2 and the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section 24, township 39 north, range 3 east, Boise meridian, containing 150.14 acres, in what was then Shoshone County, Idaho, but is now Nez Perce County, Idaho, which deed was properly signed and witnessed by Daniel Needham, and W. B. Phillips, and signed by John H. Long, and duly acknowledged on July 21, 1904, before Daniel Needham, notary public in and for Nez Perce County, State of Idaho, and filed for record July 23, 1904, at the request of W. F. Kettenbach, and recorded July 23, 1904, in Book 26 of Deeds, at page 278, by Stanley P. Fairweather, Ex-officio Recorder in and for Shoshone County, State of Idaho.

Mr. GORDON.—Q. How much did you get out of this? A. \$27.50, I think.

Q. And that was the time you made that deed?

A. Yes, sir.

(Testimony of John H. Long.)

Q. And the note was returned to you at that time?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of John H. Long, dated March 26, 1903, the nonmineral affidavit of John H. Long, the notice for publication, the testimony of John H. Long given at final proof, and the cross-examination of John H. Long at final proof, all of which papers have been identified by the witness; the testimony of the witnesses at final proof, the [1120—790] cross-examination of said witnesses, the receiver's receipt and the register's certificate, dated June 18, 1903, certified copy of the patent issued to John H. Long, dated August 3, 1904, all relating to the entry of lot 2, and the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section 24, township 39 north of range 3 east, Boise meridian. We also offer in evidence the certified copy of the receiver's receipt, just described, dated June 18, 1903, and recorded at the request of William F. Kettenbach June 22, 1903, in the office of the recorder of Shoshone County, Idaho. We also offer in evidence certified copy of the mortgage referred to by the witness, dated June 18, 1903, made by John H. Long, to Clarence W. Robnett, to secure a note of \$710.00, which was signed and executed by John H. Long, and acknowledged before John E. Nickerson, Notary Public, June 18, 1903, and filed for record at the request of William F. Kettenbach June 22, 1903, in the office of the recorder of Shoshone County, Idaho.

(Testimony of John H. Long.)

Said above-mentioned documents were thereupon marked by the stenographer as Exhibits 30B, 30C, 30D, 30E, 30F, 30G, 30H, 30I, 30J, 30K, 30L, 30M, 30N, 30-O, 30P, 30Q, and 30R.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the papers in evidence in support of bills No. 388 and 407, upon the ground and for the reason that the entry of the witness is not involved in these two particular actions. And the defendants severally object to the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are irrelevant and immaterial, and matters relating solely to the final proof, and occurring long after the filing of the sworn statement.

Mr. GORDON.—Q. Do you remember whether or not, in your first talk with Mr. Robnett, he explained to you that you could realize about \$800.00 over [1121—791] and above all your expenses, and that he was figuring with a company who would buy your timber? A. Yes, sir.

Q. And that you asked him when the timber would be sold, and he said some time before the end of the year? A. Yes, sir.

Q. Did you make the arrangements for your father and your brother at the same time to take up claims?

A. Yes, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Long, as I understand you, you had no ar-

(Testimony of John H. Long.)

rangements to sell your claim to Mr. Robnett, before you made your final proof?

A. To Mr. Robnett, did you say?

Q. Yes. A. No, sir.

Q. You had no arrangements to sell it to Mr. Kettenbach?

A. No, sir.

Q. Or to Mr. Dwyer or Mr. Kester?

A. No, sir.

Q. And you had had no conversation or talk with any of the defendants regarding the purchase of your land prior to the time you made your final proof?

A. No, sir.

Q. And the first talk you had with Mr. Kettenbach about selling it to him was something like a year after you made your final proof, is that right?

A. Yes, sir.

Q. Then the affidavit you made when you filed your sworn statement, in substance, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, [1122—792] and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. Yes, sir.

Q. True at the time you made it, and at the time you made your final proof, and is still true?

A. Yes, sir.

(Testimony of Francis M. Long.)

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all.

At this time an adjournment was taken until ten o'clock to-morrow morning. [1123—793]

On Thursday, the first day of September, 1910, at ten o'clock A. M., the hearing was resumed.

[Testimony of Francis M. Long, for Complainant.]

FRANCIS M. LONG, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Francis M. Long?

A. Yes, sir.

Q. Where do you reside, Mr. Long?

A. I live out here about twelve miles southeast of here.

Q. Where did you reside in March, 1903?

A. Here at Lewiston.

Q. And you are the father of John H. Long?

A. Yes, sir.

Q. And Benjamin— A. Yes, sir, he is my son.

Q. Benjamin F., is it? A. Yes, sir.

Q. Who first spoke to you about taking up a timber claim, Mr. Long?

Mr. TANNAHILL.—The defendants severally object to the evidence of the witness relative to his taking up a timber claim, in so far as the evidence relates to bills No. 406 and 407, upon the ground that it is irrelevant and immaterial, the entry of the witness not being involved in either of those actions.

(Testimony of Francis M. Long.)

Mr. GORDON.—Answer the question, Mr. Long. Who first spoke with you about taking up a timber claim?

A. Why, it was Mr. Robnett, I rather think.

Q. Now, where was that conversation? [1124—794]

A. It was here in Lewiston.

Q. At the bank, or on the street, or where?

A. Why, I think it was down by the bank there somewhere.

Q. Was it in the bank?

A. Well, I don't know as to that hardly; it was somewhere about the bank or near about, as well as I remember.

Q. Did Mr. Robnett broach the subject to you, or did you broach the subject to him?

A. Well, him and my sons was talking some about it, and the way I rung in we was all talking together there; I don't know just how that came, but I rather think we broached the subject.

Q. And what did he say—as near as you can remember?

A. Well, I don't remember exactly what the conversation was, really. He said they had some claims up there that could be taken.

Q. Who did he say had some claims?

A. I don't remember who.

Q. Didn't he mention any names?

A. I think it was Benton and Knight that really had the claims for to be located on.

Q. And what else was said?

A. I don't really remember much about that, what was said.

(Testimony of Francis M. Long.)

Q. Well, did you have the money with which to take up a timber claim?

A. No, sir; I borrowed it of the bank.

Q. Now, was there any arrangement made at this conversation as to where you were to get your expenses, or who was to pay them, or where you were to get the money for paying for this land?

A. Well, I just borrowed it of the bank for to pay for it, and aimed to pay it back.

Q. No, but I want to get at what was said at the first time you talked to Mr. Robnett about this timber claim, about where you were to get the money for your expenses, and to pay for the claim? [1125—795]

A. Well, he was to loan me the money for to pay the expenses and to pay the Government fees.

Q. And who was to pay the expenses of the locator? Was that discussed?

A. Well, no; I was to get the money for to pay the whole business there.

Q. Now, how long was this before you located—this conversation that you had?

A. Oh, I couldn't say exact—a few days.

Q. And was there any understanding as to how much you were to get out of this claim?

A. No, sir.

Q. Wasn't anything said about that?

A. No, sir.

Q. What were you to do with the claim after you got it?

A. We intended for to pay this claim out—get

(Testimony of Francis M. Long.)

money and pay this claim out. I had money of my own that I couldn't get a hold of at that time, is the reason I borrowed this money. We aimed to pay it out and keep the claim.

Q. What were you going to keep it for?

A. Well, for the value of the timber.

Q. At this first conversation you had with Mr. Robnett didn't he tell you that he was assembling a number of timber claims for a company, and that the company would take it before July?

A. No, sir, I think not.

Q. Are you sure of that?

A. I am pretty sure there was nothing said about a company, or anything of the kind.

Q. Well, did he say he had a party that would buy the claim by July? A. No, sir.

Q. You never testified to that at any place? [1126—796] A. I think not, sir.

Q. Were you before the Grand Jury at Moscow?

A. Yes, sir.

Q. Will you say whether or not you testified to that at that time?

A. I don't think I did. I don't remember it if I did.

Q. I will ask you whether or not when you were before the Grand Jury at Moscow, in 1905, whether this question was asked you: "And he (and the context relating to Robnett) stated to you, did he not, at that time, that he had a party that would buy the claim by July?" "Answer. Yes, would buy." "Question. And he said he had a party that would buy

(Testimony of Francis M. Long.)

the claim after you proved up?" "Answer. Yes, the claim—he would sell the claim for us if we wanted to sell it." Is that right? Do you remember whether those questions were asked you and that answer made by you?

A. No, sir, I don't remember it if I did. I might have done it. It has been quite a while ago, and I haven't thought anything about the question at all, or anything of the kind. I might have possibly done it. I don't know.

Q. How much money was Mr. Robnett to advance you, or to loan you, whichever way you want to put it?

A. I don't know exactly the amount that we did get, but he let us have money enough for to pay the expenses.

Q. Did he give it to you just as you needed it, or did he give it to you all in one lump sum?

A. He gave it all in one lump, and we gave our note.

Q. Did he give you the location fee at the same time, or did he give you that at two different times?

A. Well, I don't know but what I paid that out of my own money; I believe I did.

Q. How much was that?

A. I don't remember that for sure. I don't know what it was. [1127—797]

Q. Well, do you understand what I mean by the location fee? Do you think I mean the land office filing fee?

A. No; you mean the location fee to take us up to

(Testimony of Francis M. Long.)

look at the claims, don't you?

Q. The fee for the locator?

A. The fee for the locator.

Q. Yes—who paid that?

Mr. TANNAHILL.—Benton or Knight.

WITNESS.—Benton and Knight.

Mr. GORDON.—Q. Now, who paid that?

A. Well, that was got all in a lump there and with the money.

Q. Didn't Robnett pay that and charge it up to you? A. Well, sir, I don't hardly think it.

Q. Well, how far from the claim you located upon did you live at that time?

A. How far from the claim?

Q. Yes?

A. I couldn't say exactly to the mile, but I lived here at Lewiston.

Q. Was that 60 or 70 miles away?

A. Well, yes, it must be.

Q. And do you remember starting with a party to view this land before you made your filing?

A. Yes, sir.

Q. Who was of that party?

A. Well, John Long and Ben. Long was two; Billy Benton and Ed. Knight; and I rather think one of the Harrington boys.

Q. Ellsworth Harrington?

A. I couldn't saw which one of the Harrington boys it was. Anyway, it was one of the Harrington boys,—I wasn't much acquainted with the boys no way; and I think one or two more; I couldn't say

(Testimony of Francis M. Long.)

how [1128—798] many more; there was quite a little bunch of us.

Q. And where did you go from Lewiston?

A. Well, we went from Lewiston to Kendrick, and then along up to Steiner's; that was just a little below Dent's.

Q. Where else did you go?

A. And we went on up towards this claim, on up the river.

Q. How far up towards the claim did you stop?

A. Well, I couldn't tell you just exact; probably somewheres along nine or ten or twelve miles.

Q. You were not within nine or ten or twelve miles of the claim; is that correct? A. I guess not.

Q. Now, what was the occasion or the reason that you didn't go to the claim?

A. Well, Billy Benton said it wasn't necessary for us to go any farther. We would have went on and calculated to go on, but he said it wasn't necessary to go; we had done as much as most of any of the rest had done, and that that was all that was necessary.

Q. And so you protested, and then returned to Lewiston? A. Yes, sir.

Q. Did he tell you that under the arrangement you had with Robnett it wasn't necessary for you to go and see the claim?

A. No, I don't know as he did, under the arrangement with Robnett. I don't know as he spoke it that way at all.

(Testimony of Francis M. Long.)

Q. And what did he say besides what you have detailed here?

A. He just claimed it wasn't necessary; that we had done just as much as the majority of them had done towards seeing it.

Q. I show you, Mr. Long, the timber and stone lands sworn statement of Francis M. Long, dated March 26th, 1903, and ask you whether that is your signature to that paper, and if that is the paper you filed in the land office at Lewiston about the date it bears? A. Well, I suppose it is. [1129—799]

Q. There isn't any doubt about it, is there?

A. No, I guess not.

Q. I show you nonmineral affidavit of the same date, signed Francis M. Long. Did you sign and file that paper? A. I think so.

Q. I show you the testimony of Francis M. Long, given at the final proof, June 18th, 1903, and ask you if you signed that paper?

A. I signed a good many papers.

Q. Well, is that your signature to the paper I am showing you? A. Yes, sir, I guess so.

Q. I show you the cross-examination of Francis M. Long at final proof, and ask you if you signed that paper? A. I suppose I did.

Q. Who prepared that sworn statement for you that you have identified?

A. I'll be hanged if I remember.

Q. Well, after you had made your attempt to view this timber claim you came back to Lewiston, did you? A. Yes, sir.

(Testimony of Francis M. Long.)

Q. And did you go to Mr. Robnett's office?

A. Well, yes, we went back there to the bank.

Q. Yes, and you saw Mr. Robnett; is that right?

A. Yes, I suppose so. I seen him afterwards.

Q. And didn't he give you a description of the property and tell you to go to Mr. Nickerson's office and tell you to have these papers prepared?

A. Well, I think the papers was prepared before by Mr. Nickerson.

Q. They were at Mr. Nickerson's office, waiting?

A. I think so.

Q. Did you make any arrangements for having them prepared, or were those arrangements made for you?

A. Well, me and the two boys had them all together up there. [1130—800]

Q. And you went to the land office and filed the sworn statement and made the nonmineral affidavit?

A. Yes, sír.

Q. Now, did you pay a fee at the land office when you made that filing, or did somebody else pay it for you? A. Well, I paid it.

Q. You paid it? A. I paid it, yes.

Q. Did Mr. Robnett give you the money at that time to pay it with?

A. Yes, the money was handed over to us.

Q. Who handed it over to you?

A. Mr. Robnett handed the money over.

Q. And then several months later you made your final proof, did you not?

(No answer.)

(Testimony of Francis M. Long.)

Q. That is the time you went to the land office and paid something about \$400.00 into the land office. Do you remember that? A. Yes, sir.

Q. And do you remember whether or not you saw Mr. Robnett just before you went to the land office to make that proof?

A. State that question again. I don't know just the way I understood it.

The Reporter thereupon repeated the last question.

A. Yes, sir, I think I did.

Q. Where did you see him?

A. I seen him right at the bank, or about the bank, somewhere there.

Q. And what did you go to the bank to see him for?

A. Well, I don't know, I don't remember whether I seen him at that time or not. I rather think I had the money then—borrowed the money then. I don't know that I seen him at all at that time.

Q. Didn't you get the money from Robnett the day that you paid [1131—801] it into the land office?

A. Yes, I guess I must have got it the day I paid it into the land office. Yes, that's right; I got the money that day.

Q. And you signed a note at the same time, did you? A. Yes, I signed a note for the money.

Q. And do you remember how much money Mr. Robnett gave you that day?

A. Well, I declare I don't know.

Q. Was it \$400.00?

A. Well, it was enough to cover the expenses; I

(Testimony of Francis M. Long.)

don't exactly know how much that was.

Q. The expenses for what?

A. For the Government.

Q. That was the money that you paid in the land office? A. Yes.

Q. And from the receipt they gave you at the land office on that occasion it appears that you paid an even \$400.00.

A. Well, it was probably that much that I got.

Q. And you say he gave you that the same day you made your proof, and you gave a note for it?

A. Yes, sir, I think that's correct.

Q. And did you go directly from the bank to the land office and pay that money in? A. I think so.

Q. Now, was there any discussion between you and Mr. Robnett as to what you should say when you went to the land office, relative to where you had received that money? A. I think not.

Q. Do you remember where you told them you got that money when you went to the land office?

A. I told them it was my own money, and which I considered it was my own money. [1132—802]

Q. Do you remember telling them how long you had had that money?

A. No, I don't remember that.

Q. Do you remember telling them where you got the money? A. No, sir, I don't.

Q. See if you remember this question being asked you on cross-examination, when you made your final proof: "Question 16. Did you pay out of your own individual funds all the expenses in connection with

(Testimony of Francis M. Long.)

making this filing, and do you expect to pay for the land with your own money?" "Answer. Yes. Yes."

Is that correct? A. Yes, sir, I guess that's right.

Q. You considered that that was your own money, as you had borrowed it?

A. Yes, sir, I considered it was my money, and I had borrowed it.

Q. "Question 17. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. I sold stock. 7 or 8 years." Is that correct?

A. Yes, sir, I sold stock and had some money in the bank at the same time I got this money.

Q. Well, I am speaking about the money you paid into the land office. You had just gotten that from Mr. Robnett, had you not?

A. Well, I don't remember just exactly that question.

Q. No, but I am asking you about the fact now, Mr. Long.

A. I don't know whether—I don't remember ever saying that. I may have said it.

Q. But I mean the fact is, the money you paid into the land office you had gotten a few minutes before from Mr. Robnett, had you not?

A. Yes, sir.

Q. And that answer isn't exactly correct?

A. Which?

Q. That answer isn't exactly correct?

The SPECIAL EXAMINER.—What is your answer? He asks you—that is a question whether

(Testimony of Francis M. Long.)

that answer is correct or not? [1133—803]

WITNESS.—Yes, sir, I suppose it is correct.

Mr. GORDON.—Q. Do you remember signing a mortgage to Mr. Robnett for \$728.75 the same date that you made your final proof? A. Yes, sir.

Q. And that mortgage was to run for a year?

A. Yes, sir.

Q. Now, you have no recollection, have you, of paying anybody a location fee?

A. Well, they was to get a location fee—Benton and Robnett—out of it, I suppose, but it came through Robnett some way or another. He settled that when the mortgage was drawn up.

Q. In other words, if you paid it he gave you the money to pay it?

A. Why, sure he gave me the money to pay it.

Q. And that was included in the mortgage?

A. Yes, sir.

Q. But you have no recollection of whether you paid it personally, or whether Robnett or somebody else paid it?

A. No, sir, I don't remember anything about that.

Q. Now, don't you remember Mr. Robnett and you discussing the propriety of you testifying at the land office whether or not that was your money? Wasn't that discussed at that time?

A. At the land office?

Q. Just before you went to the land office?

A. Now, I don't believe I understand your question yet.

Q. You went to the land office and testified that

(Testimony of Francis M. Long.)

that was your own money that you was paying into the land office? A. Yes, sir.

Q. Now, do you remember whether or not just before you went there you and Mr. Robnett and your sons went over that question and discussed the matter as to whether or not you should testify that it was [1134—804] your own money?

A. I don't think so. I don't think there was anything said about that.

Q. You don't remember that?

A. I don't remember that.

Q. Have you ever gotten any money for that claim? A. Have I got any?

Q. Yes? A. I got a little.

Q. How much? A. \$25.00 over expenses.

Q. Who gave you that?

A. Well, we sold the claim to Kettenbach.

Q. Which Kettenbach—William F.?

A. Yes, William F. Kettenbach; he got the claim.

Q. And who gave you the \$25.00?

A. Kettenbach—William Kettenbach.

Q. And where did you make that settlement?

A. I made it there at the bank.

Q. With Mr. Kettenbach himself?

A. Yes, with Mr. Kettenbach himself, as well as I remember.

Q. In the first talk you had with Mr. Robnett about this claim, did he tell you what he could sell that claim for? A. No, sir, I think not.

Q. Didn't he tell you he could sell it for \$1,500.00 or \$1,600.00? A. No, sir, I think not.

(Testimony of Francis M. Long.)

Q. Are you sure?

A. Well, Benton spoke of it when we were up in the timber; he claimed it was worth \$1,500.00 or \$1,600.00, if I had a mind to sell it.

Q. I say, I am speaking about Robnett.

A. Well, I don't think Robnett said anything about it.

Q. You would not be sure of it, would you? [1135—805]

A. No, sir, I wouldn't be sure, but I don't think that he ever said anything about what he could sell the claim for, or anything of the kind.

Q. Very little of the transaction relative to the taking of this claim was done by you, was it?

A. Well, I didn't do very much about it. I was steady at work.

Q. Did you ever pay any interest on that note?

A. No, sir.

Q. Do you know what became of the note that you gave Mr. Robnett? A. No, I don't.

Q. I show you a deed dated August 9th, 1904, made by Francis M. Long and Annie E. Long to William F. Kettenbach, and ask you if you signed, executed and acknowledged that deed? A. Yes, sir.

Q. And your wife signed it, too? That is her signature? A. Yes, sir.

Q. And you never made any other deed of this property, did you? A. Which?

Q. You never made any other deed of this property, did you? A. No, sir.

Mr. GORDON.—It is stipulated by and between

(Testimony of Francis M. Long.)

the parties that Francis M. Long and Annie E. Long, his wife, made and executed a deed August 9th, 1904, conveying to William F. Kettenbach, in consideration of \$1.00, the north half of the southwest quarter and the north half of the southeast quarter of section 13, in township 39 north, of range 3 east, Boise meridian, containing 160 acres; that said deed was acknowledged August 9th, 1904, before D. Needham, a notary public of Nez Perce County, and that the same was filed for record at the office of the Recorder of Shoshone County, August 12th, 1904, at the request of William F. Kettenbach, and recorded in Book 26 of Deeds at page 305.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document, but object to the evidence in so far as it [1136—806] relates to bills No. 406 and 407, upon the ground that it is immaterial, the entry of the witness not being involved in either of these actions.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Francis M. Long, dated March 26th, 1903, the nonmineral affidavit of Francis M. Long, the notice for publication, the testimony of Francis M. Long given on final proof, the cross-examination of Francis M. Long at the final proof, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the Receiver's Receipt and the Register's Certificate, dated June 18th, 1903, and a certified copy of the patent issued to Francis M. Long, dated August 3d, 1904, all

(Testimony of Francis M. Long.)

relating to the entry of the north half of the southwest quarter and the north half of the southeast quarter of section 13, township 39 north, of range 3 east, Boise meridian. We also offer a certified copy of the Receiver's Receipt, dated June 18th, 1903, for the north half of the southwest quarter and the north half of the southeast quarter of section 13, township 39 north, of range 3 east, of Boise meridian, which was recorded in the office of the Recorder of Shoshone County at the request of W. F. Kettenbach June 22d, 1903. We also offer in evidence a certified copy of a mortgage, dated June 18th, 1903, made and executed by Francis M. Long and Annie E. Long, his wife, to Clarence W. Robnett, to secure a promissory note of even date in the sum of \$728.75, made by Francis M. Long and Annie E. Long, payable in one year to the order of Clarence W. Robnett, interest at one per cent. a month. The mortgage is acknowledged by Francis M. Long and wife Annie E. before John E. Nickerson June 18th, 1903, and recorded in the office of the Recorder of Shoshone County at the request of W. F. Kettenbach June 22d, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the admission of any of the documents in evidence in so far as they relate to bills No. 406 and 407, upon the ground that the entry of the witness is not involved [1137—807] in either of these actions, and that they are irrelevant and immaterial. The defendants also severally object to

(Testimony of Francis M. Long.)

the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are matters relating to the final proof, and occurring long after the filing of the sworn statement, and irrelevant and immaterial. And the defendants severally move to strike out all of the evidence of the witness relative to the making of final proof and the conversations relating to the money with which he made the final proof, and any questions that he may have answered during his final proof, or upon making his final proof.

Said documents were thereupon marked by the Reporter as Exhibits 31, 31A, 31B, 31C, 31D, 31E, 31F, 31G, 31H, 31I, 31J, 31K, 31L, 31M, 31N, and 31-O.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Long, how long did you keep your land before you sold it to Mr. Kettenbach—how long after final proof?

A. Well, I couldn't say just exactly the time; it was quite a little spell.

Q. It was about a year, was it not?

A. Well, something near that, I suppose.

Q. Your note was to run a year? A. Which?

Q. Your note was to run a year?

A. Yes, sir. I think we sold it before it was due.

Q. And you made your final proof—

A. I don't know but what it was due before we sold it. I think likely it was a year before we sold it, or over.

(Testimony of Francis M. Long.)

Q. You made your final proof on June 8th, 1903, and you made your deed August 8th, 1904. Then, it was more than a year after you made final proof before you sold your land?

A. Yes, sir; I guess it was. [1138—808]

Q. Did you have any agreement with Mr. Kettenbach that you would sell him the land before you made the deed, or immediately prior to making the deed?

A. No, sir; we didn't have any agreement with Mr. Kettenbach whatever.

Q. Did you have any agreement with anyone that you would sell your land before you made your final proof? A. No, sir.

Q. You had no such agreement with Clarence W. Robnett? A. No, sir.

Q. Or with Benton, or Knight, or anyone else?

A. Nobody.

Q. Then, your affidavit that you made at the time you made or at the time you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," now that affidavit was true, was it? A. Yes, sir.

(Testimony of Francis M. Long.)

Q. True at the time you made and filed your sworn statement? A. Yes, sir.

Q. And at the time you made your final proof?

A. Yes, sir.

Q. And it is still true?

A. Yes, sir, it is still true. [1139—809]

[Testimony of Benjamin F. Long, for Complainant.]

BENJAMIN F. LONG, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. Benjamin F. Long.

Q. Benjamin F. Long? A. Yes, sir.

Q. Are you a son of Francis M. Long, who has just testified? A. Yes, sir.

Q. And a brother of Mr. John H. Long, who was here yesterday? A. Yes, sir.

Q. How old are you, Mr. Long? A. I am 29.

Q. Do you remember taking up a claim under the timber and stone act in 1903, in March?

A. Yes, sir.

Q. Are you a married man? A. No, sir.

Q. What was your occupation in March, 1903?

A. Anything I could do.

Q. You have no trade nor profession, have you?

A. No, sir.

Q. And were you working at laborer's work at that time? A. Yes, sir.

(Testimony of Benjamin F. Long.)

Q. A farm-hand or mill-hand? A. Yes, sir.

Q. And what were your wages at that time?

A. Oh, all the way from \$3.00 down to \$2.50.

Q. What work did you do that paid you \$3.00 a day? A. Sawmill work.

Q. Doing what? [1140—810]

A. Sawmill work.

Q. And did you work regularly? A. Yes, sir.

Q. Or were you only employed periodically?

A. I worked every day the sawmill run.

Q. And did the sawmill run over six months in the year?

A. Well, now, I couldn't say how long it did run.

Q. With whom did you make arrangements to take up a timber claim?

A. Well, sir, I didn't make no arrangements at all myself; my brother done all that kind of work.

Q. Sir?

A. I say I didn't make any arrangements at all; my brother did all that kind of work.

Q. That is, your brother John H. Long?

A. Yes, sir.

Q. Now, what were the arrangements he made for you?

A. Do you mean arrangements to take up a timber claim?

Q. Yes?

A. Well, I don't know, he went down town.

Q. He went down where?

A. He went out with Knight; I don't know where he did go; he went down town. I was working at

(Testimony of Benjamin F. Long.)

the sawmill myself.

Q. And did he come to you and tell you to take up a timber claim? A. Yes, sir.

Q. And did he say anything about where the money was to come from to take up this timber claim?

A. Yes, sir.

Q. What did he say about that?

A. Well, he was to get the money from Robnett and Knight; they was to furnish the money.

Q. To get the money from Robnett and what? [1141—811]

A. Well, I don't know—to get it from Robnett or Knight, or get it from the bank down there.

Q. And did you know how much a timber claim would cost?

A. Well, I did then. I don't know—I don't remember just how much it did cost.

Q. How much?

A. I say, I don't know how much it did cost.

Q. And did you own any property at that time?

A. No, sir.

Q. Did you ever talk with Mr. Robnett about a timber claim yourself? A. No, sir.

Q. And you started out to look at this timber claim before you filed on it, did you? A. Yes, sir.

Q. With whom did you go?

A. I went with Mr.—

Q. Your father and your brother, whom you have named? A. Yes, sir.

Q. And Mr. Ellsworth Harrington?

A. Yes, sir.

(Testimony of Benjamin F. Long.)

Q. Well, was Mr. Knight and Mr. Benton along?

A. Yes, sir; both of them.

Q. And do you remember anybody else?

A. Well, that's all I remember of.

Q. And you left Lewiston together, did you?

A. Yes, sir.

Q. And where did you go?

A. We went up towards Kendrick.

Q. Up towards Kendrick? A. Yes, sir.

Q. And how far toward Kendrick? [1142—812]

A. Well, we went up as far as Dent.

Q. And how much farther?

A. That's as far as we went.

Q. Now, how far were you from the timber claim then? A. About 16 miles, I think.

Q. About 16 miles? A. Yes, sir.

Q. And have you ever been on that timber claim?

A. Not right on the claim. I have been all around it, but not to it.

Q. And why didn't you go to see the timber claim?

A. Well, he wouldn't take us; that was the reason.

Q. Now, who wouldn't take you?

A. Well, Benton.

Q. Benton? A. Yes, sir; he was the one.

Q. Was that William B. Benton?

A. I don't know what his name was. Benton is all I know.

Q. And what did he say was the reason he wouldn't take you to it?

A. Well, he said that it wasn't necessary; there wasn't any of the rest of them doing it.

(Testimony of Benjamin F. Long.)

Q. And so you took his word for it, and came back— A. — to Lewiston.

Q. Well, did Mr. Robnett, or Mr. Benton, or anyone else tell you that you would have to swear at the land office that you had been on this land?

A. No, sir.

Q. You did swear to that, though, didn't you?

A. Yes, sir.

Q. And you hadn't been on it, had you?

A. No, sir.

Q. And who paid your expenses in going up there to Dent and back? [1143—813]

A. We did; we paid our own.

Q. Who did? A. We did.

Q. Did you pay any of the expenses?

A. Yes, sir.

Q. How much did you pay?

A. Well, I don't know how much it cost.

Q. Did you pay anybody a fee for locating you?

A. Yes, sir.

Q. Who did you pay?

A. Well, we paid Robnett.

Q. You paid Robnett? A. Yes, sir.

Q. Now, did you pay him, or did he just take that out of the note that you gave him later?

A. We gave a note for it.

Q. That was after you had filed, though, some time? A. Yes, sir.

Q. Do you know how much the location fee was?

A. No, sir; I don't remember now.

Q. Well, why did you pay a location fee when they

(Testimony of Benjamin F. Long.) .

didn't take you to the land?

A. Well, that's what I don't know.

Q. I show you timber and stone lands sworn statement dated March 26th, 1903, signed Benjamin F. Long, and ask you if you signed that paper and filed it in the land office at Lewiston? A. Yes, sir.

Q. I show you the nonmineral affidavit of the same date, signed Benjamin F. Long. Is that your signature to that paper? A. Yes, sir.

Q. I show you the testimony of Benjamin F. Long given at the final proof June 18th, 1903. Is that your signature? [1144—814] A. Yes, sir.

Q. I show you the testimony of Benjamin F. Long on cross-examination at final proof? Is that your signature? A. Yes, sir.

Q. Mr. Long, did you come to see Mr. Robnett at Lewiston before you filed this sworn statement which I have shown you? A. Yes, sir.

Q. And did he direct you where you should have that paper prepared? A. Yes, sir.

Q. What did he tell you?

A. He told me in the next room there in the bank.

Q. What's that?

A. He came in the next room there.

Q. Did you go to Mr. Nickerson's office—a lawyer?

A. Yes, sir.

Q. And he prepared that paper for you?

A. Yes, sir.

Q. And you filed it in the land office?

A. Yes, sir.

Q. Who paid the fee when it was filed?

(Testimony of Benjamin F. Long.)

A. We did.

Q. Who is "we"? A. Myself and my brother.

Q. Now, did you pay anything, or did your brother pay it all? A. Well, sir, I paid my share.

Q. Well, where did you get the money to pay it with? A. I worked for it.

Q. Where? A. I worked for it.

Q. Now, let me ask you: You gave Mr. Robnett a note for \$728.75; is that correct? [1145—815]

A. I don't know. I don't remember.

Q. Now, did Mr. Robnett advance all this money and then you gave him a note for as much as he advanced afterwards and a bonus?

A. I don't think we did.

Q. You don't know very much about this whole transaction, do you?

A. No, sir; I don't know very much about it. I was working at the time.

Q. How is that?

A. I don't know very much about it. I was working at the time.

Q. You took up this claim and did just what you were told to do; is that correct? A. Yes, sir.

Q. And signed any paper they told you to sign?

A. Yes, sir.

Q. Now, do you remember the time that you came to make final proof—the day you paid \$400.00 in the land office? A. What's that?

Q. Do you remember the day you came down to Lewiston to make final proof, and you paid \$400.00 in the land office? A. Yes, sir.

(Testimony of Benjamin F. Long.)

Q. Now, did you see Mr. Robnett that day?

A. Yes, sir.

Q. And how much money did you get from him?

A. Well, I don't remember. I don't remember.

Q. Did you get all the money that you paid in the land office from him? A. Yes, sir.

Q. And were you in Mr. Robnett's office at the bank just before you went to the land office and paid that money in?

A. I don't remember whether I was or not; I think we was, though.

Q. Well, the money you got from Mr. Robnett was the money you paid in the land office, was it not? [1146—816] A. Yes, sir.

Q. And they gave you a receipt for that money at the land office, didn't they? A. Yes, sir.

Q. And what did you do with that—give it to Mr. Robnett? A. I think we did.

Q. And was it after you made your proof that you signed the *noté* and the mortgage? A. Yes, sir.

Q. What was your understanding that you were to do with this land when you first made arrangements to take it up?

A. We didn't have any understanding at all.

Q. You didn't have any understanding at all?

A. No, sir.

Q. And wasn't it the understanding that you were to sell it to Mr. Robnett? A. No, sir.

Q. Nothing at all was said? A. No, sir.

Q. Was anything said about what you were to do

(Testimony of Benjamin F. Long.)

with it? A. No, sir.

Q. Was anything said about how much it would cost you to take it up? A. Yes, sir.

Q. How much?

A. How much it would cost, you say?

Q. Yes. Did your brother tell you what the expenses would be, or what it would cost?

A. Yes, sir.

Q. How much was it?

A. I don't remember just now.

Q. You haven't any idea? [1147—817]

A. No, sir; not just now, I haven't.

Q. And did you have the money at that time to buy a timber claim?

A. Well, I didn't have it all; I had some.

Q. How much did you have?

A. Oh, I couldn't say how much I did have.

Q. How much?

A. I couldn't say how much I did have.

Q. \$25.00. \$30.00?

A. Oh, I had more than that.

Q. \$50.00?

A. Oh, up in the hundreds, somewhere.

Q. You had what? A. I had over \$100.00.

Q. Where did you keep it?

A. Well, in my pocketbook.

Q. Did you keep it in the bank at that time?

A. No, sir; I didn't have any account at the bank at that time.

Q. How is that?

(Testimony of Benjamin F. Long.)

A. I didn't have any account at the bank at that time.

Q. Did you have any bank account at that time?

A. No, sir; I don't think I had.

Q. Have you a bank account now? A. Yes, sir.

Q. Whereabouts?

A. In the First National Bank.

Q. Here?

A. Yes, sir. It was the Idaho Trust, but it ain't now.

Q. The Commercial National?

A. The Bank of Commerce.

Q. But I understood you to say you didn't have any bank account at the time that you took up this claim, or when you made your final [1148—818] proof, is that correct?

A. Well, I don't remember whether I had or not. I don't know.

Q. I asked you if you had any bank account or kept any money at the bank at that time?

A. Well, I did have some money, but I had loaned it out, and I don't remember whether I had any at that time or not. I don't remember now.

Q. Do you remember making a deed for this land?

A. Yes, sir.

Q. To whom did you make it? A. Kettenbach.

Q. William F. Kettenbach? A. Yes, sir.

Q. Who negotiated that sale for you?

A. Well, he wrote to us and wanted us to pay off the mortgage, and we didn't answer it, and so he—I think John he wrote to him then and asked him

(Testimony of Benjamin F. Long.)

what he would give him for it.

Q. Now, you gave a note to Robnett and he turned it over to Mr. Kettenbach; is that correct?

A. Yes, sir.

Q. And when the note came due Kettenbach wrote to you about it, and you told him that you couldn't pay the note, or your brother did, and wanted to know if he would take the land; is that correct?

A. Yes, sir.

Q. And how much did you get out of your land?

A. I don't remember how much it was.

Q. Was it \$50.00? A. Well, I couldn't say.

Q. Was it \$25.00?

A. Well, I couldn't say to that either; it wasn't very much, I know.

Q. You never paid any interest on that note, did you? [1149—819] A. No, sir.

Q. Nor taxes? A. No, sir.

Q. And you never had any of your own money, except your expenses to the timber and the first filing fee, in the deal, at all, did you?

A. That was all I had.

Q. And when you made the deed you got some small sum? A. Yes, sir.

Q. You don't know how much it was?

A. I don't remember how much it was.

Q. Have you any recollection at all how much you got? A. No, sir.

Q. Did you get any? A. Yes, sir.

Q. Now, was it \$10.00?

A. Oh, it was more than that.

(Testimony of Benjamin F. Long.)

Q. How much more?

A. Well, I couldn't tell you how much more; it was over \$25.00, though.

Q. \$27.50?

A. Oh, I don't remember what it was.

Q. Did you get the same amount—do you remember whether you got the same amount that your father and your brother got?

A. The same amount.

Q. Just exactly the same amount? A. Yes, sir.

Q. Who was that paid to, you or your brother.

A. It was paid to myself.

Q. It was paid to yourself? A. Yes, sir.

Q. Did you ever make more than the one deed to this timber claim? A. Yes, sir. [1150—820]

Q. To whom did you make the second deed?

A. I don't remember now who it was. I made an affidavit to sell it was all.

Q. Now, as I understand you to say, the money that you made final proof with in the land office you got from Mr. Robnett the morning that you made your proof; is that correct? A. Yes, sir.

Q. And you got it in the Lewiston National Bank?

A. Yes, sir.

Q. Was anything said at that time as to what you should say at the land office at proof as to where you got that money? A. No, sir.

Q. Didn't you discuss that?

A. We had—there may have been something, but I don't remember what it was now.

Q. Well, don't you remember that it was said that

(Testimony of Benjamin F. Long.)

you must say that that was your own money?

A. I don't know but what there was; I think there was.

Q. And that you had had it, and that you had worked for it? A. Yes, sir.

Q. That wasn't true, though, was it?

A. No, sir.

Q. Do you remember when you went to the land office with that money that Mr. Robnett had given you, and the question was asked you where you had gotten the money, and how long you had it in your actual possession, you said you had worked for it and had it for two years?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

WITNESS.—I don't remember.

Mr. GORDON.—Q. That wasn't true, though, was it?

A. No, sir. [1151—821]

Q. In the first talk your brother had with you about that timber claim, did he tell you how much you could get out of it? A. Well, yes.

Q. How much did he say you could get out of it?

A. I think he said about \$1500.00.

Q. About \$1500.00? A. Yes, sir.

Q. Did he tell you who you could get that from?

A. No, sir.

Q. Did he tell you who told him he could get that much?

A. Well, he said Robnett thought he could sell it for that much.

(Testimony of Benjamin F. Long.)

Q. And that was the first talk your brother had with you about taking up a claim?

A. Yes, sir.

Q. And it was that conversation that induced you to go into this timber claim business?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And was it your understanding then from that first talk that Mr. Robnett was to sell that claim for you, and you were to get the difference between what the expenses was and about \$1500.00?

Mr. TANNAHILL.—We object to that as leading and suggestive and immaterial.

Mr. GORDON.—Answer the question.

A. No, sir.

Mr. GORDON.—Read the question and see if he understands it.

The Reporter thereupon repeated said question, as follows:

“Q. And was it your understanding then from that first talk that Mr. Robnett was to sell that claim for you, and you were to get the difference between what the expenses was and about \$1500.00?”

A. No, sir. [1152—822]

Q. Well, what did you expect to make out of it?

A. I expected to make all I could sell it for.

Q. Well, I understood, though, you said your brother said that Mr. Robnett said he thought he could sell it for \$1,500.00?

A. He said he thought we could get that out of it; he didn't say that he would sell it. He said he

(Testimony of Benjamin F. Long.)

thought we could get that much out of it.

Q. Did you think you were going to get \$1,500.00 over and above all your expenses?

A. I did when it first happened.

Q. Or did you think the claim would sell for \$1,500.00? A. Well, I didn't know.

Q. As the money was to be loaned you, and you were not to use any of your own money, you didn't pay very much attention to it, did you?

A. No, sir.

Q. You were not very much interested in it?

A. Well, I was interested in it in one way.

Q. In what way—to get as much as you could?

A. Yes, sir.

Q. Did it make much difference to you whether the timber on it was good or bad? A. Yes, sir.

Q. What difference did it make to you?

A. Well, the more timber it had on it the more I could get out of it.

Q. Were you told how much timber was on it?

A. Yes, sir.

Q. Who told you that—Benton?

A. Benton, I think.

Q. And you took his word for it? A. Yes, sir.

[1153—823]

Q. I show you a deed signed and executed by Benjamin F. Long, running from Benjamin F. Long to William F. Kettenbach, and dated July 25, 1904, and ask you if you signed that deed? A. Yes, sir.

Q. And delivered it to Mr. Kettenbach?

A. Yes, sir.

(Testimony of Benjamin F. Long.)

Mr. GORDON.—It is stipulated by and between the parties that Benjamin F. Long made and executed a deed dated July 25th, 1904, to William F. Kettenbach, in consideration of \$1.00, for the south half of the northwest quarter and the south half of the northeast quarter of section No. 13, in township No. 39 north, of range 3 east, of Boise meridian, and acknowledged the same July 25th, 1904, before D. Needham, a notary public of Nez Perce County, and that said deed was filed for record July 27th, 1904, in the office of the Recorder of Shoshone County, at the request of William F. Kettenbach, and recorded in Book 26 of Deeds, at page 281.

Mr. TANNAHILL.—The defendants severally object to the evidence offered, in so far as it relates to Bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Benjamin F. Long, dated March 26th, 1903, the notice of publication, the nonmineral affidavit of Benjamin F. Long, the testimony of Benjamin F. Long given on final proof, and the cross-examination of Benjamin F. Long given on final proof, all of which papers have been identified by the witness, the testimony of the witnesses on final proof, and the cross-examination of them, the Receiver's Receipt and the Register's Certificate, dated June 18th, 1903, and a certified copy of the patent issued to Benjamin F. Long, dated August 3d, 1904, all relating to the entry of

(Testimony of Benjamin F. Long.)

the south half of the northwest quarter and the south half of the northeast quarter of section 13, in township 39 north, of range 3 east, Boise meridian. We also offer a certified [1154—824] copy of a mortgage made and executed by Benjamin F. Long June 18th, 1903, conveying to Clarence W. Robnett the south half of the northwest quarter and the south half of the northeast quarter of section 13, township 39 north, of range 3 east, Boise meridian, to secure a promissory note signed by Benjamin F. Long, dated June 18th, 1903, in the sum of \$728.75 payable to the order of Clarence W. Robnett in one year, with interest at the rate of one per cent per month. Said mortgage was acknowledged by Benjamin F. Long before John E. Nickerson, a notary public of Shoshone County, June 18th, 1903, and was recorded in the office of the Recorder of Shoshone County at the request of William F. Kettenbach, June 22d, 1903. We also offer a certified copy of the Receiver's Receipt issued to Benjamin F. Long, dated June 18th, 1903, in payment of the south half of the northwest quarter and the south half of the northeast quarter of section 13, township 39 north, range 3 east, Boise meridian, recorded at the request of W. F. Kettenbach, June 22d, 1903, in the office of the Recorder of Shoshone County, Idaho.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to all of the documents offered in so far as they relate to bills No. 406 and 407, upon the ground that they are irrelevant and immaterial, the

(Testimony of Benjamin F. Long.)

entry of the witness not being involved in these two particular actions. And the defendants severally object to the final proof papers being admitted in evidence in support of either of the actions, upon the ground that they are irrelevant and immaterial, and matters relating to the final proof, and occurring long after the filing of the sworn statement.

Said documents were thereupon marked by the Reporter as Exhibits 32, 32A, 32B, 32C, 32D, 32E, 32F, 32G, 32H, 32I, 32J, 32K, 32L, 32M, 32N, and 32O.

Mr. GORDON.—Q. Mr. Long, you remember the conversation you have detailed with your brother, when he told you that you could get \$1,500.00 out of it, or something to that effect? You remember telling me that, do you? [1155—825]

A. Yes, sir.

Q. Well, who was present at that conversation besides yourself and your brother? Do you remember whether your father was present?

A. I don't remember.

Q. You don't remember? A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Long, how long after you made your final proof was it before you had any negotiations with W. F. Kettenbach relative to the sale of the land to him? A. I don't remember.

Q. It was about something over a year, was it not? (No answer.)

(Testimony of Benjamin F. Long.)

Q. You made your final proof—

A. I don't remember.

Q. The final proof papers show that you made your final proof June 18th, 1903, and the deed shows that you conveyed it to William F. Kettenbach, July 25th, 1904; then it would be something over a year before you had any talk with Mr. Kettenbach regarding the sale of the land; that is, something over a year after you made final proof?

A. Yes, sir.

Q. And as I understand you, you had no agreement or understanding with anyone to convey your land to them before you made your final proof?

A. No, sir.

Q. Neither to Clarence Robnett, or William B. Benton, William F. Kettenbach, George H. Kester, William Dwyer, or anyone else? A. No, sir.

Q. Then the affidavit you made when you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in [1156—826] good faith to apply it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true at the time you made it, was it? A. Yes, sir.

Q. And it was true at the time you made your

(Testimony of Benjamin F. Long.)

final proof? A. Yes, sir.

Q. And it is true at the present time?

A. Yes, sir.

Q. Now, in this conversation with your brother relative to \$1,500.00, did your brother tell you that the claim ought to be worth \$1,500.00?

A. No, sir.

Q. What did he tell you?

A. Well, he said that they thought it would be worth that much.

Q. Thought it would be worth \$1,500.00?

A. Yes, sir.

Q. That is the conversation, as you remember it?

A. Yes, sir.

Q. There was no understanding that you should sell it for \$1,500.00? A. No, sir.

Q. And you didn't understand that you was to sell it for \$1,500.00 or any other sum?

A. No, sir.

Q. You intended to pay the claim out, pay what money you had borrowed, and keep your claim until you got a good opportunity to sell it?

A. Yes, sir.

Q. As I understand you, you made an agreement or signed a contract to sell it to someone else before you sold to Kettenbach? [1157—827]

A. Yes, sir.

Q. Who was it you signed that contract to?

A. I don't remember.

Q. You gave an option on it, did you not?

A. Yes, sir.

(Testimony of Benjamin F. Long.)

Q. Was it the same party your brother gave his option to? A. Yes, sir.

Q. And that option was never taken up?

A. No, sir.

A recess was thereupon taken until two o'clock P. M. [1158—828]

At two o'clock the taking of testimony was resumed.

[Testimony of George Ray Robinson, for Complainant.]

GEORGE RAY ROBINSON, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. George Ray Robinson.

Q. Where do you reside, Mr. Robinson?

A. Lewiston. Well, I have been at Winchester this summer, but I live here.

Q. You resided at Lewiston in March, 1903?

A. Yes, sir.

Q. Do you remember of taking up a timber claim about that time? A. Yes, sir.

Q. I show you timber and stone land sworn statement of George Ray Robinson, dated March 31, 1903, and ask you whether you signed and filed that paper in the land office about the date it bears?

A. I did.

Q. I show you the testimony of George Ray Rob-

(Testimony of George Ray Robinson.)

inson given on final proof, and ask you if you signed that paper June 26, 1903? A. Yes, sir.

Q. I show you the cross-examination of George Ray Robinson, taken at the same time, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. Mr. Robinson, what was your occupation at that time? A. Electrician.

Q. Where were you employed?

A. Lewiston Light Company.

Q. Was Mr. Guy Wilson employed there at the same time? A. He was.

Q. And Mr. Bertsel H. Ferris? [1159—829]

A. He was.

Q. What was your salary at that time?

A. Why, either two or two and a quarter a day.

Q. Were you married? A. No, sir.

Q. What was your age at that time?

A. How long ago has that been?

Q. 1903. A. It has been six years, hasn't it?

Q. Six or seven. How old are you now?

A. I am thirty-five, or I will be thirty-five the next to the last day of January.

Q. Did you own any property at that time?

A. No, sir.

Q. Did you have any money in the bank?

A. No.

Q. Who first spoke with you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to his

(Testimony of George Ray Robinson.)

taking up a timber claim, in so far as it relates to bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions, and it is immaterial.

Mr. GORDON.—Answer the question.

WITNESS.—I didn't get the question.

Q. Who first spoke with you about taking up a timber claim? A. Why, Bert. Ferris.

Q. Well, state what he said to you.

A. Why, he said that Mr. Robnett had some claims in view that we could get.

Q. And did you go to see Mr. Robnett?

A. I did.

Q. What was your conversation with Mr. Robnett? [1160—830]

A. Why, he told us that claims were very scarce, but he had a couple that could be located on if we was fast about it and located before somebody else got to them.

Q. Did you have any money with which to take up a timber claim? A. No, sir.

Q. Was any arrangement made that he was to advance you the money? A. Yes, sir.

Q. What was he to do,—to advance all expenses?

A. Well, he would advance the money with which to prove up with.

Q. Were you to pay the other expenses?

A. Yes, sir.

Q. How about the locator's fee? Was anything said about that?

A. Well, the claims were to be sold, that is, he said

(Testimony of George Ray Robinson.)

he thought he had a buyer in view, and when the claims were to be sold, why the locator was to have \$100.00 and the man that estimated the claim was to have \$125.00.

Q. What were you to get?

A. I was to get the remainder of what the claim was sold for.

Q. Was any price set, or what it would be sold for?

A. Well, no, not what it would be sold for, but he said he could almost guarantee us \$500.00 clear; he said he thought it would surely sell so that we could get \$500.00 above the selling price of the claim,—above the other expenses.

Q. That was before you located on the land that this arrangement was made, was it?

A. Yes, sir.

Q. Now, you said he told you to file before someone else might take them up. Is that correct?

A. Yes, sir.

Q. Was anything said about whether you should go to view the land?

A. He told us that we had better file right away, because there was parties up in there looking at claims, and if we waited until we [1161—831] could go to see them they would very likely be taken.

Q. Mr. Robnett was the one that told you this?

A. Yes, sir.

Q. Where was this conversation?

A. At the house.

Q. Was any arrangement made that you were to

(Testimony of George Ray Robinson.)

see him later about it?

A. Why, we was to go to the bank next morning and get the,—I don't know what it was,—some paper to take up to Nickerson.

Q. The description of the land?

A. The description, I suppose.

Q. Did you go to the bank? A. Yes, sir.

Q. Who went with you? A. Bert. Ferris.

Q. What part of the bank did you see Mr. Robnett in?

A. In the directors' room; I suppose it was that room.

Q. And he gave you some paper to take over to Mr. Nickerson? A. Yes, sir.

Q. Do you remember whether or not the paper that you,—I will ask you, do you remember what the paper was that he gave you to take to Mr. Nickerson?

A. No, I really don't remember exactly.

Q. Do you remember what it looked like?

A. It looked something like that.

Q. Do you remember whether Mr. Nickerson prepared that sworn statement for you?

A. I don't know. I might tell by looking at it; I am not sure.

Q. Well, you are looking at it now, aren't you? That is the first paper you filed in the land office.

A. I suppose that is the one.

Q. What did you get at Mr. Nickerson's office if it wasn't that paper? [1162—832]

A. I suppose it was that paper.

Q. Did you have to pay Mr. Nickerson any fee for

(Testimony of George Ray Robinson.)

his services? A. I really don't remember now.

Q. Do you know whether you did or not, or don't you remember?

A. I don't remember, but it seems to me something like \$1.00, but I am not positive about it.

Q. Do you think you paid it, or did Mr. Robnett pay it?

A. I know if there was any charges, I paid it.

Q. Then you took it to the land office and filed it?

A. Yes, sir.

Q. Did you pay any fee there? A. I did.

Q. Was it your own money, or was that advanced to you? A. It was my own.

Q. When you filed on this land, and prior to the time you filed on this land, after your first talk with Mr. Robnett, what was your understanding you were to do with this land?

A. Well, the understanding was that he had a buyer in view and he was to sell the land for us.

Q. Now, what was your understanding? Was it your understanding that you were to sell it to whom Mr. Robnett told you?

A. Well, not exactly that; he was to sell the land in case he could, but in case he couldn't or didn't sell it, we had the privilege of selling it to someone else.

Q. I understand that, but until you found out that he couldn't sell it, your understanding was that you were to let him have the sale of it, is that correct?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Well, I don't think that, I don't know exactly

(Testimony of George Ray Robinson.)

how that could be, but I know I didn't try nor didn't have any intention of trying to sell it, but I depended on him to make the change for me. [1163—833]

Q. That is what I am trying to get at, Mr. Robnett, if your understanding with Mr. Robnett before you took up this claim was that he was to control the sale of it.

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Yes, he was to sell it, but I believe that in case I found a buyer that would give more I would have sold it.

Mr. GORDON.—Q. When did you get that notion into your head?

A. Well, I don't know; I don't believe there was anything in the contract that would have kept me from that, but at the same time I didn't have any intention of doing it.

Q. When did he tell you that he would sell that land?

A. About the 1st of September, I believe.

Q. Wasn't it the 1st of July?

A. No, I think it was about the first of September, maybe it was July.

Q. Wasn't it that he told you he had a company or some parties that he was assembling a number of timber claims for, and that he would turn yours in to that, about a certain date, which you fix as the first of September, is that correct?

A. Yes, something like that, either he had the people that were going to buy claims and he thought he

(Testimony of George Ray Robinson.)

would make the change, sell it to them.

Q. You say you didn't have any money at that time to take up a claim? A. No.

Q. And if it hadn't been for this arrangement with Mr. Robnett would you have taken up a claim?

A. No, sir.

Q. He gave you the description of the land that he wanted you to locate on, did he not?

A. Yes, sir. [1164—834]

Q. You had never been up into this timber country, had you? A. No, sir.

Q. And you did not know whether the claim you were filing on had any timber on it or not, did you?

A. No, sir, I did not.

Q. You filed the papers in the land office that you have identified here as your sworn statement, and do you remember whether or not, in swearing to that paper, you swore that you had been upon the land?

A. I swore that I had.

Q. With whom did you discuss the propriety of swearing to that,—anyone?

A. I don't exactly understand that word.

Q. Did you discuss with anyone before you went to the land office to swear to that statement whether or not it was right that you should swear to it?

A. Yes, I did.

Q. With whom? A. Robnett.

Q. Did he soothe your conscience to the extent that you could make that statement?

A. Well, he said no one would be the loser, the Government would get their money, and I could go

(Testimony of George Ray Robinson.)

and see the land afterwards, and there would be no practical difference.

Q. Well, you did go to see the land later, did you?

A. Well, we started up there, but we never got there.

Q. With whom did you start? A. Bill Benton.

Q. How far did you get?

A. I think they called it a mile or two above Big Island.

Q. Was it beyond Dent?

A. Oh, yes, beyond Dent.

Q. What was the nearest to the timber that you got? [1165—835] A. We were in the timber.

Q. I know, but I mean this timber claim.

A. You mean how near I got to it?

Q. Yes.

A. Well, I must confess that I don't know.

Q. Were you within ten miles of it?

A. Well, Benton said it was just a few miles, but I don't know.

Q. Who was with you on that trip, besides Benton?

A. Ferris, Sage Achin, and N. J. Allen and Bert Phillips.

Q. Did you say Bert. Ferris too?

A. Yes, Bert. Ferris,—I mentioned him first.

Q. That is Bertsel H. Ferris, is it? A. Yes.

Q. Who else?

A. A fellow by the name of Chapman, I believe it was.

Q. Which Chapman was that?

A. I don't know what his name was,—just Chap-

(Testimony of George Ray Robinson.)

man. I had forgotten all about him until just lately. He was with the bunch. I think there was nine of us.

Q. Did any of them get any nearer to the timber than you did?

A. Well, yes, perhaps; in the afternoon before we started back, why, Ferris and Sage Achin, I believe Sage, two or three of them anyhow, took a boat and went up the river a little ways. They started out and I supposed they were going up to see the land. In fact, I didn't know they was going until after they had gone, and they came back and—

Q. Why didn't you go all the way after you had gotten that far?

A. Well, sir, I must confess I don't really know; Benton didn't seem to want to take us.

Q. Did he say anything about it?

A. Well, I don't know.

Q. Don't you remember whether he said something about it? [1166—836]

A. Well, I know the talk about coming back,—he said the boys all seemed to want to come back, and so he said he thought it was all right and we would come back.

Q. Did he tell you it wasn't necessary to see the land?

A. Well, I don't know whether he did or not.

Q. You didn't care much about the land anyhow, did you?

A. No, but I really did want to go on the claim.

Q. What did you want to go on the claim for?

A. Well, partly for curiosity.

(Testimony of George Ray Robinson.)

Q. What was the other part? That you wanted to swear to the truth when you went to the land office?

A. Yes, I would rather swear to the truth; still I didn't realize the weight of it like I have since. If I had I would have either gone on or I wouldn't have took it up.

Q. Then, you came back to Lewiston, did you?

A. Yes, sir.

Q. How long was that before you made your proof?

A. I don't remember for sure, but I think that was in June some time, and I think we proved up in July; I am not sure.

Q. Just a short time before?

A. Yes, not so very long.

Q. Did you see Mr. Robnett again in this transaction, before you made proof?

A. Well, I guess we did before we proved up, of course. I don't know how soon, but we saw him I guess the same day we got the money.

Q. Was that the day you made proof? A. Yes.

Q. Where did you see him on that occasion?

A. I think in the directors' room, that north room at the bank.

Q. The Lewiston National Bank? A. Yes.

Q. What did you get that day,—any money?
[1167—837] A. Yes, sir.

Q. How much money did you get?

A. I think it was \$400.00.

Q. What did you do with that \$400.00?

(Testimony of George Ray Robinson.)

A. Went up to the land office and gave it to Mr. West.

Q. And made your proof with it?

A. Made the proof.

Q. The same \$400.00 that Robnett gave you?

A. Yes, sir.

Q. Did they give you a receipt for it at the land office? Did the receiver give you a receipt?

A. I presume he did.

Q. What did you do with that?

A. I don't know.

Q. Do you remember whether you took it back to Mr. Robnett? A. No, I don't remember now.

Q. After you went to the land office did you make a note, give a note for the money you had gotten?

A. Yes, sir.

Q. How long afterwards?

A. I believe we gave the note the same day, but I am not sure.

Q. Do you remember how much the note was for?

A. I remember how much I thought it was for.

Q. Well, was it for more than you thought it was for? A. Yes, sir, it certainly was.

Q. How much was the note for, do you remember?

A. Why, I supposed at the time that it would be for the \$400.00 that I borrowed for the claim to prove up, and \$125.00 for estimator, and \$100.00 for the locator, I supposed that was what it would be; if the note was to be any more I can't remember about it.

Q. Wasn't it that you were to give the locator \$100.00 and the estimator, \$25.00? [1168—838]

(Testimony of George Ray Robinson.)

A. No, sir.

Q. Well, I don't want to correct your testimony.

A. You mean \$125.00?

Q. Altogether.

A. A hundred and twenty-five altogether?

Q. Yes, for the locator and the estimator?

A. No; one or the other of them was to get \$125.00, but I don't remember for sure which, because I didn't care just so I got the claim and got to sell it and got the money on it. If I had to give up that I wasn't particularly interested which one got it, but one or the other was to get \$100.00 and the other \$125.00, then I was to get the balance.

Q. Your only interest in it was to get the money that it would sell for, and it was immaterial to you how much it cost, is that correct?

A. Well, I wanted it to cost as little as possible, so that when it was sold I would get as much as possible, but if I had to give up that to get it I didn't care which got that.

Q. Did Benton do you any good on that claim?

A. No, he certainly didn't.

Q. Mr. Robnett gave you the description of it and tended to that part of it for you, did he?

A. Yes, sir.

Q. And Mr. Benton took you out on a little excursion? A. Yes, sir.

Q. And endeavored to soothe your conscience?

A. Well, I don't want to charge him with anything, but we didn't see the claim anyhow.

Q. Do you remember, when you were in the bank

(Testimony of George Ray Robinson.)

with Mr. Robnett just before you made your proof, of any questions being shown you? A. Yes, sir.

Q. Were they a set of the questions and cross-examination that you were to be put through at the—

A. At the land office. [1169—839]

Q. Land office? A. Yes, sir.

Q. Well, were you instructed as to how to answer those questions?

A. Why, he showed us a paper that had been filled out and we looked over the questions.

Q. The papers that had been filled out, were they the ones you used or did he have a set of others?

A. No, a set of someone else's.

Q. And you studied up the answers so that you could make them like that?

A. Well, not exactly, we didn't exactly study them. He went over several of them, a good many of them, and we thought the answers was good enough for us.

Q. Was anything said at that time as to where you should swear you got the money you were making proof with?

A. Yes. I don't know exactly what was said, but I do remember that there happened to be on that other paper something in regard to that; I don't remember what was on the paper, but I read it, and I would say that I borrowed the money on my own personal note, which I did.

Q. Were they endeavoring to get you to say it was your own money?

A. I don't really know that he endeavored to.

Q. Did he suggest it?

(Testimony of George Ray Robinson.)

Mr. TANNAHILL.—I object to that as leading and suggestive.

A. I don't know that he suggested it or not. I really thought he expected me to say that; I don't know.

Q. The reason I say that, you told the truth about it, you told him you borrowed the money on your own note?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—I wish when you talk you would talk plain enough so that I can hear what you say.

The SPECIAL EXAMINER.—Whom were you speaking to? [1170—840]

WITNESS.—Mr. Tannahill. When he talks when I am talking it rather interferes with me.

The SPECIAL EXAMINER.—Well, he was making an objection. When he starts to make an objection you wait till he gets through before you answer.

Mr. GORDON.—He was just talking for the record.

Q. Now, who was with you in the directors' room of the bank with Mr. Robnett the day you went there the day you made proof?

A. Mr. Ferris, Bert. Ferris.

Q. He was present at all this conversation?

A. Yes, sir.

Q. Now I will ask you whether or not you felt free to sell this land to anybody but Mr. Robnett prior to the date that he had told you in your first conversation with him that he could dispose of it?

(Testimony of George Ray Robinson.)

A. Well, I don't know as I had any feeling on the subject; I didn't try to, I didn't have any intention of trying to. I left it all in his hands.

Q. I will ask you whether or not it was a fact that you left the whole transaction in his hands?

A. Yes, sir, I did. I didn't do it in a business like way at all. If I had, I would never have got into it.

Q. You did just exactly what he told you to do during the whole transaction? A. Yes, sir.

Q. Do you remember to whom you made the note that you gave Mr. Robnett?

A. To the Lewiston National Bank.

Q. You are sure of that? Wasn't it payable at the Lewiston National Bank?

A. It might have been; the Lewiston National Bank held the note.

Q. Do you know what became of it?

A. When I sold the claim, I think that I got the note back; at the [1171—841] time of the Moscow trial, at that time I couldn't remember at that time. I didn't have any reflection at all, but since that time I can reflect, and I think I got the note and tore it up, although I am not positive; they may have the note yet so far as me being positive am concerned.

Q. You gave that note, however, to Mr. Robnett?

A. Well, I guess so.

Q. I mean you presented it to him after you signed it? A. Yes.

Q. And you haven't any recollection of the person to whose order the note was made?

(Testimony of George Ray Robinson.)

A. Well, not in particular, no.

Q. You didn't care anything about that, did you?

A. No, sir.

Mr. GORDON.—Have you got the deed there.
Mr. Tannahill?

Mr. TANNAHILL.—Yes. (Handing deed to
Mr. Gordon.)

Mr. GORDON.—I asked you if you executed a mortgage the same day you made the note to Mr. Robnett? A. No, it was several days afterwards.

Q. Several days afterwards you made the mortgage? A. Yes.

Q. And did you make the note the same day you made the mortgage?

A. No, the note was given the same day I proved up on the claim, I think.

Q. And from the date of the mortgage you made the mortgage the same day.

A. The mortgage was dated,—I don't know when it was made, but I know when I signed it or got it or saw it, at least, it was several days afterwards, but it was dated back the same date as the note.

Q. But it was some time afterwards that you executed the mortgage? A. Yes.

Q. How long after you made your proof did you sell this claim? [1172—842]

A. Well, I don't remember now,—a couple of years afterwards.

Q. Who negotiated the sale of it for you? Who had the selling of it for you?

A. Well, sir, I don't remember now whether Mr.

(Testimony of George Ray Robinson.)

Robnett told me to go to see Kettenbach or not; I suppose he did though, because I know I went to see Will Kettenbach. Maybe he saw Will himself; I am not sure.

Q. How much did you get out of the claim?

A. Well, the claim sold for \$1,000.00, but I only realized \$71.25.

Q. Was that all that was given to you?

A. That was all I got.

Q. The rest went to make up interest on the note, and so forth?

A. It went to make up interest on the note, but the note was \$200.00 more than I supposed it was.

Q. Didn't you even read the note when you gave it?

A. Well, I suppose I did, but I declare I don't know; I should have, at least.

Q. I show you deed, dated October 16, 1905, signed George Ray Robinson, running to William F. Kettenbach, and ask you if that is the deed you signed and acknowledged?

A. That is my signature all right.

Q. And you acknowledged that before Mr. Thomas Mullen, do you remember appearing before him?

A. Yes, I remember being before him once at least.

Mr. GORDON.—It is stipulated by and between the parties hereto that the witness George Ray Robinson made and executed a deed bearing date October 16, 1905, conveying to William F. Kettenbach, for a consideration of \$1.00, the north half of the northwest quarter and the north half of the northeast quarter of section 26, township 39 north of range 3

(Testimony of George Ray Robinson.)

east, Boise meridian; that said deed was executed by George Ray Robinson, and executed and acknowledged before Thomas Mullen, a Notary Public of Nez Perce County, Idaho, October 16, 1905, and that said [1173—843] deed was recorded at the request of the Lewiston National Bank January 6, 1906, in Book 85 of Deeds, page 201.

Q. That was the only deed you ever made for this property, was it? A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of George Ray Robinson, dated March 31, 1903, the testimony of George Ray Robinson, given at final proof, the cross-examination of George Ray Robinson given at the same time, the receiver's receipt and the register's certificate, dated June 26, 1903, certified copy of the patent issued to George Ray Robinson, dated August 3, 1904, all relating to the entry of the north half of the northwest quarter and the north half of the northeast quarter of section 26, in township 39 north of range 3 east, Boise meridian. We also offer a certified copy of the receiver's receipt just referred to, recorded at the request of W. F. Kettenbach July 1, 1903. We also offer in evidence a certified copy of a mortgage made by George Ray Robinson June 26, 1903, conveying to Clarence W. Robnett the north half of the northwest quarter and the north half of the northeast quarter of section 26, in township 39 north of range 3 east Boise meridian, to secure a note signed by George Ray Robinson, dated June 26, 1903, in the sum of \$728.75, payable in one year after its

(Testimony of George Ray Robinson.)

date, to the order of Clarence W. Robnett, said mortgage being signed by George Ray Robinson, and acknowledged June 27, 1903, before John B. Anderson, a notary public for Nez Perce County, Idaho, and recorded at the request of W. F. Kettenbach July 1, 1903, in the office of the recorder of Shoshone County, Idaho.

Said above mentioned documents were thereupon marked by the stenographer as Exhibits 33, 33A, 33B, 33C, 33D, 33E, 33F, 33G, 33H.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the documents in evidence, and also the admission of the evidence of the deed, in so far as the same relates to bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two [1174—844] particular actions, and it is irrelevant and immaterial. And the defendants severally object to the admission of the final proof papers in evidence in support of either of the bills or either of the causes, upon the ground that they relate to matters occurring long after the filing of the sworn statement, and are irrelevant and immaterial.

Mr. GORDON.—Q. See if this refreshes your recollection, Mr. Robinson. I read from the testimony reported to be given by you in the trial of William F. Kettenbach and others, at Moscow, in the spring of 1907, No. 1605, of the Circuit Court of Appeals record, on which a stipulation has heretofore been made, reading from page 1012, and I shall ask you

(Testimony of George Ray Robinson.)

if you remember the question which I shall read to you being asked you at that time, and whether you made the answer which I shall also read. From the context it would appear that this was a conversation with Mr. Robnett just prior to the time you made your entry. (Reading:) "Mr. Ruick: Now, give the conversation just as fully and as completely as you can recall it, Mr. Robinson." "Answer. Well, after going to Robnett's we spoke to him about taking a claim and to see what could be done about getting the money, and he told us he could furnish us the money to take a claim, and told us to call around at the bank and he would give us the numbers." "Question. Of the land?" "Answer. Of the land." "Question. What bank?" "Answer. The Lewiston National Bank." "Question. Well, state the conversation fully, Mr. Robinson, what was said between you?" "Answer. Well, we talked about how much timber there was on the land and what it ought to sell for, and he said he thought early in July he would have a buyer and we could turn it by that time, and that way we was to give a note for the money, and all over and above the note after the claim was sold we were to get that over and above the note." [1175—845] "Question. What were you to do with the claim after you got title to it, what privilege was he to have, if any?" "Answer. Well, he said he had a buyer he thought that would take it early in July, but if he didn't, why, we had a right to sell it ourselves." Do you remember those questions being asked you and those answers being made

(Testimony of George Ray Robinson.)

by you? A. Something similar to that; yes.

Q. Does that refresh your recollection as to whether he told you he could sell it in July or September?

A. Well, it must have been July, because I would be more likely to remember it then than now; I had forgotten that.

Q. Do you know Mr. Emory? A. Yes, sir.

Q. How long have you known him?

A. Oh, I have known him by sight for five or six years.

Q. Is he the gentleman who was connected with Mr. Colby in business, the firm of Emory & Colby?

A. I don't know whether they were—

Q. Was the gentleman you mean connected in business with Mr. Small, the miller, running a sawmill?

A. Why, Small & Emory run a sawmill, and that is the Emory I refer to.

Q. Do you remember whether or not at one time Mr. Emory wanted you to give him an option on your land? A. Yes, sir.

Q. What did you do? A. I gave him the option.

Q. Did you have to see somebody before you gave him the option?

A. Why, I think Mr. Robnett told me he wanted an option, but I am not certain.

Q. Do you remember whether or not you went to see Mr. Robnett and asked him if you could give him an option?

A. I believe I did, now I think about it. [1176—846]

(Testimony of George Ray Robinson.)

Q. I am reading from page 1051 of the same record, and I will ask you whether or not this question was asked you at the trial to which I have referred, and whether you made the answer which I shall also read: "Question. How did it come about that you gave Mr. Emory an option on this timber?"

"Answer. Why, I think Mr. Emory asked me for an option, and I told him I would speak to Mr. Robnett first, and if it was all right with him I would give it to him. I told him I had given Mr. Robnett an option and I didn't know how long and if it had run out, and if Robnett had no objection I would give him the option." "Question. The option was solicited by Mr. Emory?" "Answer. Yes, sir." Do you remember those questions and answers?

A. I don't remember about the questions, but I think that is about the facts.

Q. They are the facts?

A. I think they are the facts.

Mr. GORDON.—Mr. Tannahill, I don't know where that note is. Can we read it from the record here?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—It is stipulated by and between the parties that the note referred to by the witness is as follows:

"728.75 Lewiston, Idaho, June 21, 1903.

One year after date, without grace, for value received, I promise to pay to the order of Clarence W. Robnett at the Lewiston National Bank, Lewiston, Idaho, the sum of Seven Hundred and Twenty-eight

(Testimony of George Ray Robinson.)

and 75/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin at the rate of one per cent. per month until paid, and if suit be instituted to collect this note or any part thereof, I promise to pay the additional sum of Seventy-five Dollars as attorney's fees in said suit.

GEORGE RAY ROBINSON.

P. O. Lewiston, Idaho.

(Endorsed on the back:) [1177—847]

Pay to W. F. Kettenbach without recourse.

CLARENCE W. ROBNETT."

Mr. GORDON.—Q. Did Ed. Knight go to the timber with you, too? A. He didn't.

Q. Did you have any talk with him about Ed. Knight?

A. I didn't even know Ed. Knight at that time.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Robinson, how long after you made your final proof was it that you sold your claim? You made your final proof, I believe the records show, about June 21, 1903, and the deed is dated October 16, 1905. That is about the time you held your claim, is it, before you sold it?

A. Well, I don't remember. It seems to me like it was a couple of years. I sold it at fair time, just before the fair, the first day of the fair, something like that.

Q. When was the first conversation you had with Kettenbach regarding the sale of your land, in relation to the time you sold it to him, October 16,

(Testimony of George Ray Robinson.)

1905, how long before that?

A. I don't know for sure. It seems to me like I met him on the street, since I think about it now, I think I met him on the street, and he told me to come in there, either that or else Robnett sent me in, I have forgotten which for sure, but one or the other one I saw and they told me to come in the bank and they would give me \$1,000.00 for the claim and I could have all the note didn't call for.

Q. What?

A. I would get the difference between that and the note.

Q. Didn't you go to Kettenbach and ask him to buy it? [1178—848]

A. I don't know. I tried to sell it pretty hard. I don't know whether I tried to sell it to him.

Q. Do you remember what he told you when you went to him and asked him to buy it?

A. Well, he said he would give me \$1,000.00, but whether it was him or Robnett sent me there I am not positive, but I guess I spoke to him on the street.

Q. And don't you remember he told you you had better keep your claim?

A. No, I don't remember that. I remember he sent me a statement a time or two to pay up the interest.

Q. How is that?

A. I remember I got a statement to pay up the interest a time or two.

Q. Do you remember of overtaking Mr. Kettenbach on the street at one time and talking to him

(Testimony of George Ray Robinson.)

about this claim and about your note and mortgage?

A. I believe I did.

Q. Do you remember what you said to him at that time and what he said to you?

A. No, not altogether. One time,—I guess it was probably the time he told me to come into the bank and he would buy the claim of me, I suppose that is the time, very likely.

Q. Now, don't you remember that Mr. Kettenbach told you to keep your claim and to pay the interest or the principal in \$5.00 payments?

A. Yes, sir.

Q. You remember that, do you?

A. Yes. It was some time,—I don't remember whether it was this particular time you think of or not.

Q. Well, at some time during these negotiations with Mr. Kettenbach he told you to keep your claim and pay him in \$5.00 payments, [1179—849] or any payments you could make? A. Yes.

Q. To pay him \$5.00 a month?

A. Yes, he wanted me to do that.

Q. Now, didn't you tell him that you couldn't sell your claim and you didn't want to keep it?

A. Yes.

Q. Didn't he also tell you that if you wasn't satisfied, if you would come in he would look over the papers and see how much he could allow you for the claim? A. Yes.

Q. And he had carried your note then something over a year, upwards of two years? A. Yes.

(Testimony of George Ray Robinson.)

Q. And then you went to the bank in a day or two for him to figure up what he could give you?

A. I did.

Q. And it was that time that you reached the agreement to sell him the land? A. Yes, sir.

Q. And you had had no agreement with him before that time? A. No, no agreement.

Q. Now, do you know when it was that you gave Robnett the option? Do you know whether you gave him a written option or not? A. I did.

Q. On the day you proved up?

A. I don't know about that; I think I gave him two options, I am sure.

Q. You gave him one about the time you proved up? A. I think I did.

Q. And that was a written option?

A. I know I gave him one written option, maybe two or three, I am not sure. [1180—850]

Q. Then, after that you gave Mr. Emory an option? A. Yes, sir.

Q. Now, you had no contract or agreement with Mr. Robnett to sell the land to him at the time you made your proof, did you? A. No.

Q. Or at the time you made or filed your sworn statement, at the time you filed on the land?

A. I never had any agreement to sell it to him, no.

Q. And you never had any agreement to sell it to anyone else until after you made your final proof, did you?

(Testimony of George Ray Robinson.)

A. No. We never had no agreement to sell to anyone.

Q. At the time you filed your sworn statement, the affidavit you made at that time is as follows: "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That affidavit was true, was it?

A. Well, I had to give a note for the money, I had to give a mortgage for the note.

Q. I know, but you had no contract to sell it to anyone before you made your final proof?

A. No, no particular contract.

Q. And the only understanding you had was that you would give a mortgage on it to secure the money you borrowed? A. Yes.

Q. That is the only contract you had, and you never had any contract with either Mr. Kester, Mr. Kettenbach or Mr. Dwyer until your agreement some two years after you made your final proof to sell it to them? [1181—851] A. No, sir.

Mr. TANNAHILL.—That is all.

(Testimony of George Ray Robinson.)

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Robinson, you answered a question here of Mr. Tannahill's in which you said you didn't have any agreement to sell it to anyone. What did you mean by that?

A. We had no person to sell it to.

Q. You mean the person it was to go to wasn't mentioned? Is that what you mean?

A. No, nobody ever mentioned who it was to go to, but Mr. Robnett had someone in view that he could sell it to, thought he could.

Q. I mean, you were asked if you had an agreement to sell, and you said you didn't have an agreement to sell it to anyone, and you sort of hesitated. Did you mean to say that you didn't have any agreement with Mr. Robnett that he could sell it?

A. He was to sell it, yes, sir; he was to sell the claim for us. If he hadn't,—if I hadn't thought he was going to take it off my hands I never would have taken it.

Q. When you said you didn't have an agreement to sell it to anyone you mean that no one had been mentioned, is that right?

A. No one had ever been mentioned.

Q. Do you remember when you went to the bank the first time after you talked with Mr. Robnett and Mr. Ferris, that Mr. Robnett showed you that sworn statement to go over before you filed any paper, your first papers? A. The numbers of the land?

Q. At the time you were getting the numbers of

(Testimony of George Ray Robinson.)

the land that he gave you the sworn statement, or the first paper you filed in the land office, to read over? [1182—852]

A. I don't remember. We got them in the bank, I know.

Q. Do you remember that in reading that paper over, the question of whether or not you were taking it up for your own use and benefit was discussed?

A. Yes, I believe it was.

Q. And do you remember whether or not Mr. Robnett explained to you that it was for your exclusive use and benefit, as you were to get the money over and above the note? A. Yes, sir.

Mr. GORDON.—I guess that is all.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Robinson, you are the same George Ray Robinson who testified against Clarence W. Robnett at Moscow when he was convicted of subornation of perjury, are you not? A. I am.

Q. You stated that you felt the weight of your statement that you had been upon the land more since you made the statement than you did before. You knew that the Circuit Court of Appeals has decided and held that it wasn't necessary for you to be on the land, and your statement that you made that you had been upon the land was not perjury, did you know that? A. I didn't know that; no, sir.

Q. And they also held that it wasn't necessary for you to be on the land before you made final proof, and any statement that you made at the land office

(Testimony of George Ray Robinson.)

that you had been on the land before you made final proof, that that was not perjury either? In other words, that you had done nothing wrong in saying that you had been on the land when you hadn't, and Robnett had done nothing wrong in inducing you to say that you had been on the land if you hadn't. Did you know that?

A. Why did they ask us under oath, if that wasn't legal? [1183—853]

Q. Well, that was a rule of the department; it isn't the law. That was a rule of the department, that they had those questions answered, and the Circuit Court of Appeals held that the department had no right to make such a rule as that.

A. Well, I don't believe they have myself, but they made them just the same.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all. [1184—854]

[**Testimony of Ellsworth M. Harrington, for Complainant.**]

ELLSWORTH M. HARRINGTON, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. Ellsworth M. Harrington.

Q. Have you ever testified at any trial before?

A. No, sir.

Q. Never made a statement or signed one for

(Testimony of Ellsworth M. Harrington.)

anybody, have you? A. No, sir.

Q. Where do you reside? A. Lewiston.

Q. What is your occupation, Mr. Harrington?

A. Engineer.

Q. What kind of an engineer? A. Stationary.

Q. Where did you reside in March, 1903?

A. Lewiston.

Q. Do you know Clarence W. Robnett?

A. Yes, sir.

Q. Are you related to him in any way?

A. Yes, sir.

Q. What is the relation? A. Brother in law.

Q. Did you marry sisters?

A. He married my sister.

Q. He married your sister? A. Yes, sir.

Q. Were you married in 1903? A. Yes, sir.

Q. Of what did your family consist?

A. I think my wife and I think four children, I think. [1185—855]

Q. What was your salary at that time?

A. About \$3.00 a day.

Q. Were you employed in March, 1903?

A. Yes, sir.

Q. And had been regularly? A. Yes, sir.

Q. You took up a timber claim, did you not?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated March 20, 1903, signed Ellsworth M. Harrington, and ask you whether or not you signed that paper on the date it bears and filed it in the land office? This is the first paper you filed in the land

(Testimony of Ellsworth M. Harrington.)

office? A. Yes, sir.

Q. I show you nonmineral affidavit signed Ellsworth M. Harrington, of the same date. Did you sign that paper? A. That is my signature.

Q. I show you the testimony of Ellsworth M. Harrington, given at final proof, June 15, 1903, and ask you if you signed that paper? A. Yes, sir.

Q. I show you the cross-examination of Ellsworth M. Harrington, taken at final proof. Is that your signature to that paper? A. Yes, sir.

Q. Mr. Harrington, did anyone suggest to you taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim in so far as the evidence relates to bills No. 406 and 407, upon the ground and for the reason that the entry of the witness is not involved in either of these actions, and the evidence is irrelevant and immaterial.

Mr. GORDON.—Do you remember the question?

WITNESS.—I think I do. I don't remember. You had better state [1186—856] it again, I believe.

Thereupon the stenographer repeated the last question.

A. Why, I don't recollect; I don't remember.

Q. Well, state the circumstances of your taking up a timber claim.

A. Well, I think that I asked Mr. Robnett something about taking up a claim, I think.

Q. Did you know at that time that he was inter-

(Testimony of Ellsworth M. Harrington.)
ested in persons taking up timber claims?

A. Yes, sir.

Q. Did you know of any other persons he had gotten to take up timber claims?

A. Not that I know of; no.

Q. Well, what did you say, what did he say to you when you asked him about taking up a timber claim?

A. I believe he asked me if I wanted to take up a claim, I think.

Q. Well, what happened then?

A. Well, I think I told him I did.

Q. Well, did you tell him you didn't have the money to take up the claim? A. Yes, sir.

Q. What was said then?

A. I think he said he could arrange for that part of it; I wouldn't be certain whether those was the exact words or not that he stated.

Q. What we want is the transaction as you remember it.

A. That is as near as I can recollect.

Q. How long was that before you filed on the claim, that you had this conversation with Mr. Robnett?

A. Oh, it was probably a month or two or three months, a month or so, I don't know just exactly.

Q. Did he tell you that he would have one for you later? [1187—857] A. I don't remember.

Q. Well, was anything said about what it would cost to take up a timber claim?

A. Why, I don't know exactly,—four or five hundred dollars, in that neighborhood; the exact figures I don't remember.

(Testimony of Ellsworth M. Harrington.)

Q. Were you notified by anyone of the time that you should start to look over this timber before you filed? A. I think so.

Q. Now, just tell all that happened, from the time you first talked with Mr. Robnett until you got through with the transaction.

A. Well, I think he told me that I wouldn't need to go on the timber before I filed, I think.

Q. Well?

A. And he said I was familiar with the timber up there; I used to be up on the river a good deal, and he said I could file, and I think I filed, and later proved up, I think.

Q. You did make a pretense of going to the timber, though, didn't you? A. Yes, sir.

Q. With whom did you start for the timber?

A. Why, I don't remember. There was several in the party.

Q. Well, see if I can refresh your recollection. Was Mr. Benjamin F. Long with you?

A. Yes, sir.

Q. Mr. John H. Long?

A. Yes, all the Longs, I think, were there, three Longs.

Q. And Francis M. Long?

A. Yes, the old man, the boys' father; I don't know what his initials are.

Q. Now, who else was along?

A. Well, Benton was at the head of the party, I believe.

Q. Who was Benton? What is his name,—Will-

(Testimony of Ellsworth M. Harrington.)

iam B. Benton? [1188—858] A. Yes.

Q. And was Ed. Knight along?

A. He was along, but he wasn't going with us; he was on a trip, but he was with the party, but he wasn't going with us.

Q. How far did you go?

A. Somewhere near Dent, I think.

Q. Was Mr. Ferris along?

A. Not that I recollect; I don't think so.

Q. Why didn't you go all the way to the timber after you had gotten that far?

A. Well, sir, I think Mr. Benton said he had to be back in Lewiston at a certain date, and he didn't have time to go any further.

Q. Well, who paid your expenses up that far?

A. I think I paid my own expenses.

Q. Did anyone give you the money to pay them?

A. No, sir.

Q. Then, you returned to Lewiston?

A. Returned to Lewiston.

Q. Did you see Mr. Robnett after you returned to Lewiston before you filed?

A. Why, I think I seen him several times.

Q. Where did you see him?

A. Well, I don't remember exactly; I seen him probably at my mother's house, or probably several other places. I don't remember.

Q. Did you go to see him to get the description of the land or get the papers to file?

A. I think so.

Q. Where did you see him on that occasion?

(Testimony of Ellsworth M. Harrington.)

A. At the bank, I think.

Q. Was it at the window or some other part of the bank? A. Why, I don't remember. [1189—859]

Q. Do you remember whether you and he discussed whether or not you should swear in the land office that you had gone over this land and personally examined it? A. I think so.

Q. What was said about that?

A. Well, I think he told me that I would have to swear that I had been on the land, I think.

Q. And did he hand you this paper that you have identified as the sworn statement, or did he tell you to go somewhere else and get it?

A. I think he,—let me see (witness pauses)—I think there was an attorney in the Thiessen Block, I think, that made that paper.

Q. Nickerson?

A. No, I don't think it was Nickerson.

Q. Well, were you directed there by Mr. Robnett?

A. Yes, sir.

Q. Do you remember whether you paid anything for having those papers prepared?

A. I don't think so; I don't remember.

Q. Then, you went to the land office, and do you remember whether you paid any fee there or not?

A. For filing, you mean?

Q. Yes. A. I think so.

Q. Are you sure about it?

A. I am not positive, no, but I think I did.

Q. With whom did you go to the land office that time?

(Testimony of Ellsworth M. Harrington.)

A. Why, I think Mr. Gardner, I think.

Q. He was at the land office, but did anyone go to the land office with you?

A. No, I don't think so; I don't remember, but I don't think so, Mr. Gordon. [1190—860]

Q. Now, were all the arrangements made before you went to the land office to file relative to where you would get your expense money?

A. I think so.

Q. That was the first talk you had had with Robnett about it? A. At that time?

Q. Yes.

A. Well, I think I had talked to him before that; I think so.

Q. But all this talk relative to getting the money to make your proof with was had before you filed any papers? A. Yes, sir.

Q. Now, was anything said as to what there was in this transaction for you?

A. No, sir, nothing said.

Q. Not a thing? A. Not a word.

Q. Was anything said about selling the land?

A. Not a word.

Q. Was anything said about what the land was worth?

A. There may have been; I don't remember. I think there were, though; I think it was in the neighborhood of \$1,000.00. I ain't positive, though.

Q. Now, what was said? Was it said that you could get \$1,000.00 out of it?

A. Well, no, he may have said it was worth in

(Testimony of Ellsworth M. Harrington.)

that neighborhood, of \$1,000.00; there was nothing said positive what it was.

Q. Now, as I understand, Mr. Robnett first broached this subject to you?

A. That is the way of it, I think.

Q. And suggested that he would advance you the money for the purpose of taking it up?

A. Yes. [1191—861]

Q. Now, what was there in it for him?

A. Well, he was to get a commission out of it, for selling the claim, I think.

Q. Then, he was to sell the claim?

A. No, he wasn't to sell it—if he did sell it he was to get a commission for selling it; there wasn't no agreement that he was to sell it.

Q. You mean you didn't have any written agreement?

A. No, nor no verbal agreement in that way, not positive. He was dealing in timber claims, and if he had a chance to sell it he had my permission to sell it.

Q. That was the original understanding, was it not?

A. I don't think there ever was any exact understanding made about it. It was a kind of a—I don't know whether you would call it a mutual agreement or not; we were brother in laws, and naturally, as he was in the timber business he would handle my claim for me.

Q. And you expected that, didn't you?

A. Yes, sir.

Q. And you understood the first time you talked

(Testimony of Ellsworth M. Harrington.)

with him about it that he was to handle it for you?

A. There wasn't anything said positive that he was or wasn't; I don't think it was mentioned at all.

Q. Do you remember whether or not he told you he was assembling a number of claims and that he had a person who was going to take them, and that that person would take those claims about the first of July, and that he would put yours in with them?

A. Possibly there may have been something said like that; I don't remember.

Q. Of course, I am not testifying, Mr. Harrington, and I am not suggesting these things to you for the purpose of having you say yes or no. I want to see if that doesn't refresh your recollection of the [1192—862] transaction. This has been some time ago, I understand.

A. Two or three different times he was trying to dispose of those claims; it may be that he spoke that way at times, I don't know.

Q. You understood, though, that his interest in the matter was occasioned by the fact that he expected to get a commission out of it?

Mr. TANNAHILL.—We object to that as leading and suggestive. A. Yes, sir.

Mr. GORDON.—Q. Then, it came around time for you to make proof, the time to make proof arrived, and did you see Mr. Robnett about that time?

A. To make final proof?

Q. Yes. A. Why, I think so; yes.

Q. Well, now, where did you get the money with

(Testimony of Ellsworth M. Harrington.)

which you made your proof?

A. The Lewiston National Bank.

Q. From whom?

A. Who did I get it from?

Q. Who from? A. I got it from Robnett.

Q. Whereabouts?

A. At the Lewiston National Bank.

Q. What part of the bank? Did you go in one of the back rooms, or was it given to you through the window?

A. I think it was in the directors' office, I think.

Q. How much did you get on that occasion?

A. I think \$500.00, I think.

Q. And was that the day you made your proof?

A. Yes, sir, I think so.

Q. And did you go directly from the room that you had met Mr. Robnett in and make your proof in the land office? [1193—863]

A. I think I went to the Thiessen Building and had some papers made out; I don't remember.

Q. Did you discuss with him any questions you would have to answer in the land office, when you received that money? I am speaking now of the time you made proof.

A. I know. Of the time I made final proof?

Q. Yes.

A. I expect we did; I don't remember.

Q. Don't you remember of him reading a question to you that you would have to answer, as to where you had gotten the money with which you were making proof, and how long you had had the same in

(Testimony of Ellsworth M. Harrington.)

your possession?

A. Yes, sir, I think I do remember.

Q. Did he have a set of those papers down there for you to go over? A. I don't think so.

Q. What did he tell you you would have to say?

A. He told me I would have to say I proved up with my own money.

Q. But the money that you used in the land office was the money Robnett gave you there, is that correct? A. Yes, sir.

Q. And you stretched the truth a little when you testified that you had worked for it and had had it in your possession three or four months, is that correct? A. Yes, sir.

Q. Now, when you paid that \$400.00 into the land office—you paid \$385.97 in the land office—they gave you a receipt for that, did they, the receiver?

A. I don't recollect.

Q. He gave you some paper, didn't he?

A. I have an idea he did; I don't remember, though.

Q. Do you remember whether or not you took that paper to Mr. [1194—864] Robnett immediately after that?

A. I don't remember; I don't remember of him giving me a paper.

Q. Did you sign a note to Mr. Robnett when you received that money? A. Not at that time.

Q. How long afterwards?

A. Probably a couple of days, I think; I don't remember exactly; a few days.

(Testimony of Ellsworth M. Harrington.)

Q. You signed a note for how much?

A. I think it was about \$500.00; I have forgotten the exact amount.

Q. Did you ever give him but the one note for it, or don't you remember? A. I don't remember.

Q. Do you know where that note is now?

A. I do not.

Q. You got a little over \$500.00, is that correct?

A. At the time that I—

Q. Yes.

A. I don't remember; it was in the neighborhood of \$500.00; I don't remember.

Q. Did you pay a location fee?

A. I don't think so. I paid it out of this; it was paid out of this whole thing.

Q. You mean it was held out on you?

A. Yes, it was, out of the \$500.00, I think; that covered the whole expense.

Q. Did he give you \$500.00, or did he just give you enough to pay in the land office?

A. I think it was \$500.00, I think. [1195—865]

Q. You are not very clear about it?

A. No, I am not very clear about it.

Q. You say you gave him a mortgage several days later?

A. A few days later; I don't remember the exact number of days.

Mr. GORDON.—Have you got the deed, Mr. Tannahill?

Mr. TANNAHILL.—Yes.

Q. (By Mr. GORDON.) Then later you sold this

(Testimony of Ellsworth M. Harrington.)

claim, did you? A. Yes, sir.

Q. How much cash did you get when you sold it?

A. Above all expenses?

Q. Yes, how much did you get out of it?

A. \$299.40, I think, either forty or sixty.

Q. Who negotiated the sale for you of this property, Mr. Harrington? A. I think it was Robnett.

Q. Do you know to whom you sold?

A. I sold to W. F. Kettenbach, I think.

Q. Did Robnett get anything out of it that you know of? A. I don't know.

Q. That didn't concern you, did it?

A. No. I have an idea he did, but I don't know. I know I got—I stated that.

Q. I show you deed, signed by Ellsworth M. Harrington and Anna E. Harrington, dated May 8, 1906, running to W. F. Kettenbach. Is that the deed? Did you sign that deed?

A. Yes, sir, that is my signature.

Q. And that is your wife's signature, is it?

A. Yes, sir.

Q. And that is the only deed you ever made to this land, is it? A. Yes, sir. [1196—866]

Mr. GORDON.—It is stipulated by and between the parties hereto that the witness Ellsworth M. Harrington and his wife, Anna E., made and executed a deed dated May 8, 1906, conveying to W. F. Kettenbach, in consideration of \$1,000.00, lot numbered one, and the northwest quarter of the northeast quarter and the north half of the northwest quarter of section 24, in township 39 north of

(Testimony of Ellsworth M. Harrington.)

range 3 east, Boise meridian; that said deed was acknowledged before C. H. Lingenfelter, a notary public, May 9, 1906, and was recorded at the request of the Lewiston National Bank May 12, 1906, in Book 81 of Deeds, page 621, in the records of the recorder of Nez Perce County, State of Idaho.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Ellsworth M. Harrington, dated March 20, 1903, the nonmineral affidavit of Ellsworth M. Harrington, the testimony of Ellsworth M. Harrington at final proof, and the cross-examination of Ellsworth M. Harrington at final proof, all of which papers have been identified by the witness; the testimony of the witnesses at final proof, and the cross-examination of them; the receiver's receipt and the register's certificate, dated June 15, 1903, a certified copy of the patent issued to Ellsworth M. Harrington, dated August 3, 1904, all relating to the entry of lot one, and the northwest quarter of the northeast quarter, and the north half of the northwest quarter of section 24, in township 39 north of range 3 east, Boise meridian. We also offer a certified copy of the receiver's receipt referred to, which was recorded at the request of W. F. Kettenbach June 20, 1903, in the office of the recorder of Shoshone County, Idaho. We also offer in evidence a certified copy of a mortgage made and executed by the witness Ellsworth M. Harrington and wife, Anna E., dated June 16, 1903, conveying to Clarence W. Robnett lot one, and the northwest quarter of the northeast quarter and the north

(Testimony of Ellsworth M. Harrington.)

half of the northwest quarter of section 24, in township 39 north of range 3 east, Boise meridian, to secure a note of even date, in the sum of \$729.75, made by Ellsworth M. Harrington and Anna E. Harrington, to the order of [1197—867] Clarence W. Robnett, payable one year after date, with interest at one per cent per month, acknowledged before John E. Nickerson, June 16, 1903, and recorded at the request of W. F. Kettenbach June 20, 1903, in the office of the recorder of Shoshone County, Idaho.

Said above mentioned documents were thereupon marked by the stenographer as Exhibits 34, 34A, 34B, 34C, 34D, 34E, 34F, 34G, 34H, 34I, 34J, 34K, 34L, 34M, 34N, and 34O.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to each and all of the documents offered in support of bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions, and they are irrelevant and immaterial. And the defendants severally object to the final proof papers being admitted in evidence in support of either of the actions, on the ground that they are matters relating to final proof, and long after the filing of the sworn statements, and they are irrelevant and immaterial.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Harrington, I will ask you how long did you keep your land before you talked with Mr. Kettenbach regarding the sale of it to him?

(Testimony of Ellsworth M. Harrington.)

A. Why, I think it was about three years, two or three years.

Q. And how long before May 8, 1906, the day you executed the deed, did you talk with Mr. Kettenbach regarding it?

A. I never talked with Mr. Kettenbach at all.

Q. You never talked with him at all? A. No.

Q. Who did you talk with regarding the sale of your land at that time? [1198—868]

Q. And how long before May 8, 1906, did you talk to Mr. Robnett about a sale of it to Mr. Kettenbach?

A. I don't remember.

Q. About how long?

A. At this time that I sold the claim, you mean?

Q. Yes.

A. Well, it might have been a month or two months or more; I don't remember exactly.

Q. It was longer than three months, you think?

A. It may have been.

Q. Was it as much as six months?

A. I don't remember; I couldn't say.

Q. Now, what brought about a sale of the land to Mr. Kettenbach?

A. You mean how he came to buy it?

Q. Yes.

A. Why, I suppose he was buying timber; that is all I know; was in the market buying timber.

Q. Did you tell Robnett to try to sell it to him?

A. Why, I think at that time, I think Mr. Robnett had an option on the claim at that time.

Q. He had an option on it?

(Testimony of Ellsworth M. Harrington.)

A. I think so; I am not positive.

Q. What did he say when he first talked to you about it?

A. I think he told me he had a sale for the claim.

Q. What did you tell him?

A. Well, I expect I told him to go ahead and sell it.

Q. Did he tell you to whom he had a sale for it?

A. I don't think so.

Q. Did he tell you how much, what he could get for it? A. I don't remember; I don't think so.

Q. Did you have any talk about the price at all?

A. I don't remember; I don't think so. [1199—869]

Q. Now, when did you first learn how much you were going to get for the claim?

A. Well, I can't tell; near that time he may have told me he could sell it for \$1,000.00.

Q. The best of your recollection is that about that time he told you he could sell it for \$1,000.00?

A. Yes, I think so.

Q. Now, had you given anyone else an option on it in the meantime?

A. I think so, I think Joe Malloy had an option on it before this, maybe a year or six months, maybe more.

Q. Had you tried to sell it to anyone else besides Malloy? A. Not personally; no.

Q. Had Mr. Robnett tried to sell it to anyone else before that, that you know of?

A. I think the Clearwater Timber Company, I

(Testimony of Ellsworth M. Harrington.)

think; I think they were figuring on buying some of those claims, I think.

Q. Do you know whether Robnett had any negotiations with them about buying it?

A. I don't know whether he had any personally or not.

Q. Do you know whether he had given them an option on it or not? A. I don't know.

Q. As I understand you, at the time you filed on this land, and at the time you made your final proof, you had no agreement with anyone to sell the land to them? A. No, sir.

Q. And you had no agreement even with Robnett to sell the land to him at that time? A. No, sir.

Q. And you hadn't given him an option on it at that time? A. No, sir. [1200—870]

Q. Then, the affidavit you made when you filed your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," was true, was it not? A. Yes, sir.

Q. It was true at the time you made it, and at the time you made your final proof? A. Yes, sir.

Q. And it is still true? A. Yes, sir.

(Testimony of Ellsworth M. Harrington.)

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. You said something about the Clearwater Timber people wanting to buy it. Were they negotiating with you or with Mr. Robnett?

A. With Mr. Robnett, I think; nobody ever came to me about it.

Q. And this option you gave to Joe Malloy, did you give that to Mr. Robnett?

A. Mr. Robnett got it for me, yes.

Mr. GORDON.—That is all.

At this time an adjournment was taken until ten o'clock to-morrow morning. [1201—871]

On Friday, the 2d day of September, 1910, at ten o'clock A. M., the hearing was resumed.

[Testimony of Mrs. Frances A. Clausen, for Complainant.]

Mrs. FRANCES A. CLAUSEN, a witness heretofore called by the complainant, and duly sworn, being recalled by the complainant, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. It is hard for me to remember just where I left off exactly.

A. Well, the last question you asked me I don't realize what it was. I don't remember.

Q. Now, Mrs. Justice, when—

A. Mrs. Clausen.

(Testimony of Mrs. Frances A. Clausen.)

Q. Mrs. Clausen, I should say—when you retired from the stand the other day I had been asking you a question relative to the talk you had had with Mr. Dwyer, before you went up to view the timber claim, and I had asked you some questions and asked you whether you remembered them having been asked you at one of the previous trials at which you had attended and appeared as a witness on behalf of the Government. So taking the examination up from that point we will go along easy with this examination, and if you feel indisposed at any time, why you just say so, that's all, and if you feel in distress in any way why you just indicate it, and we will stop and get you all the air you want, or any other restorative or refreshment, which you feel you may need.

A. Thank you.

Q. I had just read these questions, and I shall read them again at the present time and ask you if you remember them. I read from page 382 of record 1605, and ask you whether or not you remember these questions being read to you at the time I have referred to, and whether [1202—872] you made the replies which I shall also read:

“Q. Who was going to show you the claim?

“A. Mr. Dwyer was the locator.

“Q. Did you pay your own expenses on the way up there and back?

“A. My expenses were all paid.

“Q. By whom, if you know?

“A. By Mr. Dwyer.”

Do you remember whether or not those questions

(Testimony of Mrs. Frances A. Clausen.)

were asked you, and those answers made by you?

A. Yes, sir.

Q. That is correct, is it? A. Yes, sir.

Q. "Q. Have you had any talk with Mr. Dwyer about this matter of expenses before going up there?

"A. Yes, sir.

"Q. Can you state what was said about the matter and the matter of taking up a timber claim?

"A. Well, I didn't have money to take a claim with, and I asked Mr. Dwyer if he would get the money for me to take a claim, and he said he thought he could get the money for me, and he got the money.

"Q. What do you mean, what money do you mean you had him get for you?

"A. The money to pay all expenses for a claim for locating and my expenses there and back and for filing and for paying for the timber."

Do you remember those questions being asked you? A. Yes, sir.

Q. And those answers made by you?

A. Yes, sir.

Q. And they are the facts, are they not?

A. Yes, sir, they are the facts. I asked him to get the money for me, and he got it as I requested.

Q. Now, the next question: [1203—873]

"Q. Now, state everything in relation to that, Mrs. Justice. Did you have any understanding with Mr. Dwyer before going up to the timber about your timber claim? A. Yes.

"Q. Now, state what that understanding was.

"A. That he would get the money for me for a

(Testimony of Mrs. Frances A. Clausen.)

claim and then I would go up there and take a claim. It was a verbal agreement. I thought I would get \$150.00 clear of all my expenses.”

Do you remember those questions being asked you, and those answers made by you?

A. I remember those questions being asked me, and I answered to them, and it was to be—we figured on it, and the way the claims were selling it would bring about \$150.00 or \$200.00 above expenses, if we got a chance to sell the claim at the way they were selling.

Q. That was your understanding at that time?

A. Yes, sir.

Q. Now, do you remember this question being asked you:

“Q. What were you to do with your claim to get \$150.00?

“A. I was to file on the claim and prove up on it.”

That is correct, is it?

A. Yes, sir. That is the only way you could get the claim, was to file on one and prove up and sell it, to get anything out of it.

Q. “Q. And then, what were you to do after you proved up, if anything, in order to get the \$150.00?

“A. I gave a contract of a deed for the timber.

“Q. I am asking you with regard to the understanding between you and Mr. Dwyer before you went up there? What were you to do with this land when you got title to it?

“A. I would sell it; I would get \$150.00 for my chance in the claim.”

(Testimony of Mrs. Frances A. Clausen.)

Do you remember those questions and answers, Mrs. Justice?

A. I don't remember that. [1204—874]

Q. Well, are they the facts, as you understand them?

A. I was to give a contract to secure that money, and I gave a contract to secure the money until I should sell the claim.

Q. Do you remember when you gave that contract? Did you give it when you first spoke to him about it? A. No, sir.

Q. It was after you made the proof?

A. Yes, sir.

Q. The next question:

“Q. For your chance. Who did you get the \$150.00 from?

“A. Well, he paid me the \$150.00 and I don't know—the claim was made over to the bank, if I remember right, to pay for the note which I had in the bank.”

Is that correct?

A. The contract was made out in favor of the one he got the money from.

Q. And he gave you the \$150.00—Mr. Dwyer?

A. Yes, sir. He was to furnish me with all money to get the claim, and pay all expenses, and then I paid it back when I sold the claim, but I requested him to get all money for me.

Q. And you sold it to Mrs. Kittie E. Dwyer, the wife of Mr. William Dwyer? A. Yes, sir.

Q. And he gave you the \$150.00?

(Testimony of Mrs. Frances A. Clausen.)

A. I got more than \$150.00.

Q. Well, how much did you get?

A. I got \$225.00.

Q. Now, the next question, Mrs. Clausen, reading from the same record, and I will ask you if you remember this question and answer:

“Q. What I want to know is whether or not you had any agreement or understanding with Mr. Dwyer before you went up to the timber as to what you were to do with the land after you got title to it? [1205—875]

“A. Why, he would find a buyer for it; I was to sell it.” Is that correct?

A. He told me that he thought he could find a buyer for it.

Q. Yes?

A. He would try and find a buyer for my claim.

Q. And you were going to sell it?

A. Well, yes, sir; I intended to sell that claim when I took it, if I ever got the chance.

Q. “Q. What were you to get out of it?

“A. I was to get \$150.00 clear of all expenses.”

Is that the understanding?

A. The understanding was from the way we figured that it should bring \$150.00 or \$200.00 at the way claims were selling, above expenses. There was no terms that there should be that much, but we thought they would bring that much.

Q. Now, you say that you went with your husband and your son, Mr. Fred. Justice, and a number of others?

(Testimony of Mrs. Frances A. Clausen.)

A. I beg your pardon. I said that Fred. Justice didn't go when I went.

Q. Well, if I am wrong, I am not trying to lead you into saying something.

A. Well, my husband went with me, and Mr. Hopper, and Mr. Dwyer, and Mr. Ed. O'Brien, and I can't remember if there was anyone else or not at the time.

Q. Now, who was with you when you had your talk with Mr. Dwyer? A. My husband.

Q. And was your son along?

A. I can't remember whether he was there or not at the time. I talked with Mr. Dwyer a good many times about getting a claim.

Q. Then, you went up into the timber with this party, did you not? A. Yes, sir, I did.

Q. You went to Orofino? [1206—876]

A. Yes, sir.

Q. And then went from there to Pierce on horse-back? A. Yes, sir.

Q. And then, you went into the timber?

A. Yes, sir.

Q. And Mr. Dwyer located you?

A. Yes, sir; he showed me the corner stakes of the claim.

Q. Now, do you remember when this was, relative to the time that you made your filing?

A. I can't remember dates.

Q. Well, was it in the fall before? That's what I want to know.

A. Yes, sir; it was in the fall.

(Testimony of Mrs. Frances A. Clausen.)

Q. It was in October, was it not.

A. Well, I can't remember whether it was September or October.

Q. And you filed the following April?

A. Yes, sir.

Q. Now, do you remember who prepared your filing papers that I showed you the other day?

A. Well, I think it was Mr. West; I am not sure.

Q. And did you name the witnesses, or had somebody left the information there for him to prepare the papers?

A. I was there when he prepared the papers.

Q. Well, did you have any numbers, or had they been sent in to him?

A. I had the numbers with me.

Q. You got them from Mr. Dwyer; is that correct?

A. Yes, sir.

Q. Now, do you remember why you didn't file immediately after your return from viewing the land?

A. I don't know anything about why that was—why the filings were not made then.

Q. Now, to see if I can refresh your recollection, Mrs. Justice, [1207—877] don't you remember that those papers were made out by Mr. I. N. Smith?

A. I think that Mr. Smith—no, I don't remember whether it was Mr. Smith or Mr. West. I wasn't acquainted with either of the men, and I supposed—oh, I know that some of the papers were made out by Mr. Smith—the man that wore spectacles.

Q. They were your first papers, though?

A. Well, I don't remember. My son, Fred. Jus-

(Testimony of Mrs. Frances A. Clausen.)

tice, attended to a great deal of the business there, and I was so worried at the time that I don't remember much about it.

Q. Now, do you remember Mr. Guy Wilson and Mr. Fred. Justice being in Mr. Smith's office with you when you had your original papers prepared?

A. I can't remember now. That is a good while to remember every little detail.

Q. Now, the first paper that you filed, do you remember having that read over to you and going over it with Mr. Dwyer? A. No, sir.

Q. Now, do you remember whether this question was asked you at the trial at Moscow to which I have referred—the trial of William F. Kettenbach and others, in the spring of 1907, page 387:

“Q. How did you happen to go to Mr. Smith's office to have the papers made out?

“A. Mr. Dwyer said we could have them made out there.

“Q. Did you pay anything for having those papers made out? A. Yes, sir.

“Q. How much did you pay, if you remember?

“A. I am not positive; I think it was \$7.50.

“Q. I am speaking now not of the papers—the filing fee in the land office, but did you pay anybody for filling out these blanks?

“A. I don't remember.

“Q. Who made out the paper, if you recollect?

“A. Mr. I. N. Smith. [1208—878]

“Q. Who did the typewriting in the paper, if you remember? A. I don't know.

(Testimony of Mrs. Frances A. Clausen.)

“Q. Mr. I. N. Smith, you say, was there when the paper was made out?

“A. Yes, sir; if I remember right he was there.

“Q. Do you know who filled in the paper with a pen, you age in this blank?

“A. I am not positive.

“Q. Who asked you the question which it was necessary for you to answer?

“A. Mr. I. N. Smith.”

Now, does that refresh your recollection of the transaction?

A. Well, I can't remember for sure. I think it was Mr. I. N. Smith's office I was in, but I can't remember all those little details.

Q. I don't expect you to remember them all. Is that as near the fact as you can remember at this time? A. Yes, sir.

Q. “Q. Who else was in the office at this time that you can recall? Any members of your family?

“A. Yes, sir; Fred. Justice and Guy Wilson.”

Was that as near as you remember it?

A. Well, at that time I suppose I could have told who was in the office, but now I have forgotten. I can't remember.

Q. “Q. Were they having papers made out also?

“A. Yes, sir.

“Q. I will ask you to read over this paper, Mrs. Justice, to see if you recollect, or have any recollections of the statements that are contained in that paper? A. I don't remember.

“Q. Did you have any talk with anyone before

(Testimony of Mrs. Frances A. Clausen.)

you filed this paper as to the contents of the paper, and the statements which are made therein? [1209—879] A. Yes, sir.

“Q. With who? A. With Mr. Dwyer.”

Now, that has reference, Mrs. Justice, to the sworn statement, the first paper you filed in the land office, a little application paper; and do you remember those questions being asked you, and whether you made those answers?

A. I don't remember about the questions asked me at that time.

Q. Well, are they the facts, as you remember them now? A. I suppose they are. I don't know.

Q. “Q. Where did this conversation or these conversations occur?

“A. I talked with him at his home and also at my home about it.”

Then on the next page the examination continues:

“Paper shown witness purporting to be sworn statement in duplicate of Frances A. Justice, being an application to enter stone and timber lands at the United States Land Office at Lewiston, Idaho, the application being dated April 25th, 1904,” and that paper was identified by Mr. Goodwin. Then I will ask you whether you remember the examination being resumed and you were asked these questions: Mrs. Justice, do you remember this question being asked you?

“Q. Now, Mrs. Justice, taking this sworn statement of yours in duplicate, I will read it through: ‘I, Frances A. Justice, of Clarkston, County of

(Testimony of Mrs. Frances A. Clausen.)

Asotin, State of Washington, desiring to avail myself of the Acts of Congress of June 3d, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon and Nevada, and in Washington Territory, as extended to all of the public land states by Act of August 4th, 1892, for the purchase of lots three and four, and the east one-half of the southwest one-fourth of Section nineteen, tp. 38 north, Range 6 E. B. M., in the district of lands subject to sale at Lewiston, Idaho," do solemnly swear that I am a native citizen of the United States, of age forty-nine, and by occupation housewife.' Can [1210—880] you follow me?

"A. Yes.

"Q. (Continuing:) 'That I have personally examined said land is unfit for cultivation, and valuable chiefly for its timber, and that it is uninhabited; that it contains no mining nor other improvements, nor, as I verily believe, any valuable deposits of gold, silver, cinnabar, copper or coal; that I have made no other application under said acts. That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly nor indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my postoffice address is Clarkston, Washington. Signed, Frances A. Justice.' I read

(Testimony of Mrs. Frances A. Clausen.)

this over for the purpose of asking you certain questions. You have already stated that you had an agreement and understanding with Mr. Dwyer before you went up to the timber relative to this land. Is that correct?

“A. I had a verbal agreement; yes, sir.”

Do you remember that being read over to you and that question asked and the answers which I have read made by you, Mrs. Justice?

A. I remember that.

Q. And that is correct, is it?

A. That is, I had an agreement as I have just told you, that he would furnish me all the money, because I asked him to get it for me; but there was no agreement such as you think, that he was to furnish me the money to sell to someone else.

Q. Now, it isn't what I think; you just tell the facts as they are. You didn't have any written agreement of any kind?

A. I didn't have any written agreement.

Q. And the only agreement you had of any kind with him was merely a verbal agreement? [1211—881]

A. There was no agreement that I would sell the claim.

Q. Now, I am not talking about that; I am speaking about the transactions that you had with him. All that you had arranged with him was just by word of mouth—just verbal? A. That's all.

Q. “Q. Now, at the time you made this affidavit, you stated in there that ‘I do not apply to purchase

(Testimony of Mrs. Frances A. Clausen.)

the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit.' Now, at that time when you made that statement, was it true or untrue? A. Untrue."

Now, do you remember that question being asked you, and that answer being made by you, Mrs. Justice? A. I don't remember that.

Q. Can't you recollect at all?

A. No, sir, I can't recollect of answering that way.

Q. I will ask you if you remember this: I read from page 399 of the same printed record:

"And this statement, 'that I have not directly nor indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.' Now, at the time that statement was made by you, Mrs. Justice, was the statement true or untrue?

"A. Untrue."

Now, do you remember that question being asked you, and that answer made by you?

A. No, sir, I don't remember it. My answer now is that it was true, but I don't remember what I said then.

Q. You would not say that you did not make that answer then, would you?

A. I wouldn't say, because I can't remember.
[1212—882]

Q. Wasn't your recollection fresher on these matters three years ago than they are now, Mrs. Justice?

(Testimony of Mrs. Frances A. Clausen.)

A. I don't remember, for at that time I was so worried and sick that I don't know what—I couldn't remember what I did say; but I know that I was compelled by the Government to say a good deal—by Mr. Ruick—that I wouldn't have said otherwise.

Q. Now, are you not worried about this now?

A. No, sir; I am going to tell the straightforward truth about it now.

Q. That's all we want, Mrs. Justice. (Reading:)

“Q. Now, how did it happen—now, what explanation have you to give for having made these false statements at the time you filed your application to enter these lands?

“A. I was told it would be a benefit to me in one way, that I would get the \$150.00 out of it, and that that was a benefit to me from the land.

“Q. Who stated this to you? A. Mr. Dwyer.

“Q. Before I go any further, I will ask you, Mrs. Justice, if this statement was sworn to by you in the land office, this sworn statement? A. Yes, sir.

“Q. Now, this statement, ‘that I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.’ How did you come to make that statement?

“A. Why, I was told how to answer those questions; that it would be all right to make that statement; that it was to be—that it was to benefit me, the

(Testimony of Mrs. Frances A. Clausen.)

money I was to get out of it, and I answered the questions that way.” [1213—883]

Do you remember those questions being asked?

A. No, sir.

Q. And those answers being made by you?

A. No, sir; I don't remember that.

Q. Well, you were to get \$150.00 or more out of it, were you not?

A. The way the claims figured it should bring about that, if we got a chance to sell it.

Q. And you were to be benefited in that way?

A. Of course, it would be a benefit to me if I got \$200.00.

Q. “Q. What about the agreement, what, if anything, was said to you about the agreement? You stated here in this affidavit that you had no agreement directly or indirectly?

“A. Well, it was just a verbal agreement that I would sell my land—my interest in it, for \$150.00.”

Now, do you remember whether that question was asked you, and that answer made by you?

A. I don't remember. I might have said it. I don't remember.

Q. And that was practically as your understanding was all the way through, was it not, Mrs. Justice?

A. Why, I expected when I sold it I would get about that, the way the land was selling. There was no agreement to that.

Q. Continuing I will ask you if you remember at the same trial these questions being asked you, and these answers made by you:

(Testimony of Mrs. Frances A. Clausen.)

“Q. That’s what I want to know; what we want to know is who, if anyone, suggested to you at that time that you could answer it this way?

“A. Mr. Dwyer told me how to answer the questions; I don’t know how I answered that.

“Q. What did Mr. Dwyer say to you about this matter of the agreement? Do you recall what he said or what explanation or argument he made or gave to you?

“A. I don’t just understand. [1214—884]

“Q. Do you know that you stated here in this paper that you had no agreement, directly or indirectly, or any contract, in any way or manner with any person whomsoever? Now, then, did you have an agreement at that time?

“A. Why, that is not an agreement, is it? If it is, just a verbal agreement.”

Do you remember those questions being asked you, and those answers made by you?

A. No, sir; I don’t remember that question, either.

Q. “Q. Did you have a verbal agreement at that time? A. I did with Mr. Dwyer.

“Q. Now, then, you had some agreement, we will say. How did you come to answer that question that you had no agreement directly or indirectly, no agreement?

“A. Why, I was told that that was no agreement, a verbal agreement. A verbal agreement was no agreement.”

Now, do you remember those questions being asked you, and those answers being made by you?

(Testimony of Mrs. Frances A. Clausen.)

A. I was told that on the witness-stand one time when I was questioned, and they said it was an agreement, and a lawyer said that a verbal agreement was no agreement, unless it was a written agreement.

Q. What lawyer was that, Mrs. Clausen?

A. His name was Dick.

Q. That was before this?

A. Yes, sir, a long time.

Q. And that is where you got your understanding that a verbal agreement was no agreement?

A. Yes, sir.

Q. Now, do you remember whether Mr. Dwyer also told you that? A. No, sir; he didn't tell me that.

Q. Are you sure of that?

A. Well, if he did, I don't remember it. [1215—885]

Q. Now, I will ask you whether or not this question was asked you at the same time:

“Q. Who told you that?

“A. Mr. Dwyer told me that that was no agreement; a verbal agreement.

“Q. That a verbal agreement was no agreement?

“A. No, sir.”

Now, does that refresh your recollection any in this matter?

A. No, sir; I don't remember that at all.

Q. “Q. How long before you went to the land office do you recall that you had these conversations with Mr. Dwyer?

“A. Before I went to take the claim.

“Q. Before you went to take the claim?

(Testimony of Mrs. Frances A. Clausen.)

“A. Yes, sir; it was there I made the agreement.

“Q. Where did you get the money, Mrs. Justice, to pay the fee at the time you filed this paper?

“A. Mr. Dwyer gave me the money.

“Q. At the time you filed this first paper? At the time you filed these papers? A. Yes, sir.

“Q. Do you recall what the amount was?

“A. I think it was \$7.50, if I remember right.”

Now, do you remember whether they are the facts or not?

A. Please repeat. I didn't get all of that.

Q. “Q. Who told you that?

“A. Mr. Dwyer told me that that was no agreement, a verbal agreement.

“Q. That a verbal agreement was no agreement?

“A. No, sir.”

Do you remember that question being asked, and that answer made by you?

A. No, sir; I don't remember that. [1216—886]

Q. Well, do you remember whether Mr. Dwyer did tell you that at the present time?

A. He never told me that to my knowledge. I don't remember such a conversation with him at all.

Q. “Q. How long before you went to the land office do you recall that you had these conversations with Mr. Dwyer?

“A. Before I went to take the claim.”

You remember that, do you?

A. I remember there was a good many questions asked me, and I remember, too, that Mr. Ruick told me that I would be indicted if I didn't answer ques-

(Testimony of Mrs. Frances A. Clausen.)

tions about the way that those fellows made me make the statement. They wouldn't allow me to make the statement the way I wanted to make it. They said, "You are evading the truth now, Mrs. Justice; that isn't right," and they had me so worked up that I don't remember how I did answer questions.

Q. "Q. Before you went to take the claim?

"A. Yes, sir; it was there I made the agreement.

"Q. Where did you get the money, Mrs. Justice, to pay the fee at the time you filed this paper?

"A. Mr. Dwyer gave me the money."

Do you remember those questions being asked, and those answers made by you?

A. Yes, sir; and Mr. Dwyer did get all the money for me.

Q. And that that fee was \$7.50 that you paid in the land office? A. Yes.

Q. Now, do you remember now whether Fred. Justice and Guy Wilson went with you to the land office when you paid that \$7.50 and filed the original paper?

A. They were with me some of the time; I can't remember whether they were that particular time or not.

Q. You just tell what you remember, Mrs. Justice. I know it is [1217—887] a long time ago, and in reading these questions over to you I have no other purpose than to show that you did say these things at a previous time. If you don't remember it that way now, why say so, that's all. Now, Mrs. Justice, do you remember how long you were at the land office

(Testimony of Mrs. Frances A. Clausen.)
before you filed this claim?

A. I was there about a week.

Q. Did you stay in line all that time, or did somebody hold the line for you?

A. I had Mrs. Wilson stay in line some of the time for me, because I expected my husband would die any minute, and I didn't dare to leave him alone all the time, and I had her stay some of the time.

Q. There was no impropriety in that whatever, Mrs. Justice. A. No, sir.

Q. Now, do you remember who notified you of the time you were to make your final proof?

A. Why, I got a notice through the mail.

Q. Well, did Mr. Dwyer send you that notice?

A. No, sir; it came through the mail from the land office.

Q. Well, did Mr. Dwyer also notify you?

A. Not that I remember of. He might have. I don't know.

Q. Now, see if this refreshes your recollection. I read from page 403 of the record which I have been reading from:

“Q. How did you know the date on which that final proof would be made?

“A. Mr. Dwyer gave notice.

“Q. Did you have any talk with Dwyer before going up to the land office on the day you made final proof? A. Yes, sir.

“Q. Did you transact any business with him before going to the land office to make final proof? ,

“A. I did, after I went to the land office.”

(Testimony of Mrs. Frances A. Clausen.)

Do you remember that? [1218—888]

A. I remember talking with him the day I went to the land office.

Q. Now, what happened when you went there to make your final proof? You met him at the land office, did you not?

A. Why, I got the money of him that I had asked him to furnish me to pay.

Q. And do you remember where he gave you that money?

A. Well, I don't remember; somewhere around the building; I can't remember just where.

Q. Now, do you remember how much Mr. Dwyer gave you the day you made your final proof?

A. \$500.00, I guess it was; I don't remember; I can't remember the exact amount now. It has been so long ago I have forgotten.

Q. And do you remember whether he gave you that in Mr. Smith's office? A. I don't remember.

Q. Now, see if this refreshes your recollection a little: Do you remember that he gave you the money with which to make the final proof, and that there was \$6.00 too much, and you took that back to him?

A. Yes, sir.

Q. And then he also gave you some money for a location fee? A. Yes, sir.

Q. Now, how much was that he gave you for a location fee?

A. I was to give him \$100.00 for locating me.

Q. And he handed you a hundred dollar bill, did he not? A. I guess so; I don't remember now.

(Testimony of Mrs. Frances A. Clausen.)

Q. And you handed it back to him; is that correct?

A. I don't remember.

Q. Now, see if this refreshes your recollection:

"Q. State whether or not the amount he (Dwyer) gave you was sufficient to pay for the land?

"A. Yes, sir; it was more than sufficient, \$6.00 more.

"Q. What did you do with the \$6.00? [1219—889]

"A. I gave it back to him.

"Q. Who was in the office at the time he gave you this money? A. Fred. Justice and Guy Wilson.

"Q. In what part of the office did he give you this money, if you remember?

"A. In I. N. Smith's office; I don't remember; it was in the main office.

"Q. In what form was the money, if you recall, bills or gold or silver?

"A. It was gold, some of it, \$100.00 was in bills. I remember there was a hundred dollar bill for locating."

Do you remember that?

A. I don't remember now.

Q. Do you remember whether those questions were asked you, and those answers made by you?

A. I don't remember the questions that was asked at the time. It is too long to remember.

Q. And you signed a note at that time, did you not?

A. Yes, sir; I gave a note for the money.

Q. Do you remember to whom the note ran?

A. To the bank.

Q. To the Lewiston National Bank?

(Testimony of Mrs. Frances A. Clausen.)

A. I don't know which bank by the name. I don't know which bank; it was to the bank, anyway.

Q. Now, you took the money that Mr. Dwyer gave you and made your final proof with it, did you?

A. Yes, sir.

Q. And do you remember having any discussion with Mr. Dwyer as to where you should say you had gotten that money? A. No, sir; I don't.

Q. And I understood that Mr. Guy Wilson and your son went to the land office with you when you made your proof? [1220—890]

A. I think they did.

Q. Now, do you remember where you told them you got that money, when they asked you at the land office where you received it, and how long you had had it?

A. I remember what I said to the land office; yes, sir.

Q. What did you say?

A. I said that I had raised fruit for it, for I intended to take the crop of fruit and pay that back, at the time.

Q. And that you had had it in your possession one month; is that correct? A. I don't remember.

Q. I will read Question 17 of the cross-examination on final proof: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?"

"Answer. Sold fruit. One month in my possession." And you say you understood, as you were going to pay this money back when you sold your

(Testimony of Mrs. Frances A. Clausen.)

fruit, why that would be answering that properly? That was your understanding, was it not?

A. Yes, sir; I supposed that would be all right. I didn't suppose it made any difference where I got the money.

Q. And did you talk that over with anybody?

A. I didn't want it known that I had borrowed money again, because I had such a mortgage on my place.

Q. Now, do you remember these questions being asked you: I read from the same record, the trial of Kester, Kettenbach and Dwyer, at page 407:

“Q. Do you remember whether or not your witnesses were there at the same time that you made your final proof? A. Yes, sir.

“Q. They were? Where was Mr. Dwyer?

“A. He sat at the table with me at my right, and Mr. Bliss on my left. [1221—891]

“Q. What part did Mr. Dwyer take in the proceedings?

“A. Well, when I didn't know how to answer the questions, he prompted me.

“Q. I will ask you if before going to make your final proof you had a talk over these matters with any person as to how you should answer these questions or any of them? A. Yes, sir.

“Q. Do you recall when and where and how long before you made your final proof?

“A. I was—I don't remember how long before it was—Mr. Dwyer had a blank, and he told me the question and how to answer it.

(Testimony of Mrs. Frances A. Clausen.)

“Q. Where was this?

“A. At his home or at my home.

“Q. You say he had a blank with him?

“A. I think he had a blank. He told me what the questions were and told me how to answer, and I wouldn't be positive about the blank.”

Do you remember those questions being asked, and those answers made by you?

Mr. TANNAHILL.—We object in relation to the final proof, upon the ground that it is irrelevant and immaterial.

Mr. GORDON.—Now, just answer whether you remember those questions being asked you, and those answers made by you.

A. Yes, sir. I remember of asking Mr. Dwyer what questions would be asked me at the land office, for I had never been to an office and I didn't know what questions would be asked, and I asked him what questions they would ask me, and he told me some of the questions that would be asked.

Q. Now, do you remember this question being asked you:

“Q. Now, I will read from this final proof of yours, Question 13. ‘Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which [1222—892] the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?’ Now, that part of it

(Testimony of Mrs. Frances A. Clausen.)

which reads, 'Or have you directly or indirectly made any agreement or contract,' etc. To that you answered no, in the land office. Now, was that answer made by you true or untrue at the time it was made?

"A. Untrue.

"Q. Did you know it was untrue?

"A. Yes, sir."

Q. Do you remember whether those questions were asked you, and those answers were made by you?

A. I don't remember those questions.

Q. You would not say that they were not asked you, and that you didn't make the answers?

A. I would say I don't remember them.

Q. Now, Mrs. Justice, you delivered this note that you made the date of final proof to Mr. Dwyer, did you not, as soon as you made it? A. The note?

Q. Yes.

A. Yes, sir. He got the money for me and I made out the note.

Q. Well, just answer yes or no about that.

A. Well, yes, sir, then.

Mr. TANNAHILL.—And you can make any explanation, Mrs. Justice, that you want to.

WITNESS.—He got the money for me and I made out the note so that he would be safe about borrowing the money for me.

Mr. GORDON.—Q. And then, did he give you any other money that day, later in the day?

A. No, sir; not that I remember of.

Q. When did he give you the \$150.00, or the money

(Testimony of Mrs. Frances A. Clausen.)

that you got? Wasn't that the same day?

[1223—893]

A. No, sir.

Q. How long afterwards was it?

A. I sold my claim to Mrs. Dwyer, and I got my money then.

Q. Now, the same day that you made your final proof, didn't Mr. Dwyer give you \$150.00, and you went to the Lewiston National Bank and called for your note and they gave it to you?

A. I can't remember. I went and got my note, because I had made out a contract to secure that money.

Q. And they turned the note back to you?

A. Yes, sir.

Q. Now, don't you remember that that was the day that you made your proof?

A. I can't remember now.

Q. And who gave you your note at the bank.

A. I don't know, because I didn't know anyone in the bank.

Q. And you didn't pay any money there? You just went there and demanded your note; was that it?

A. I demanded my note.

Q. I say, you didn't pay any money for it?

A. No, sir.

Q. Now, I will ask you if you remember this question being asked you, and this answer made by you:

“Q. How did you come to make that answer in that way?” Referring to the question that I had read before. “What explanation have you to give?

(Testimony of Mrs. Frances A. Clausen.)

“A. Well, that it would be all right to answer the questions that way, being only a verbal agreement, a verbal contract.”

Do you remember whether that question was asked you, and that answer made by you?

A. I don't remember.

Q. “Q. Who told you that?

“A. Mr. Dwyer. [1224—894]

“Q. Now, this Question No. 14, ‘Do you make this entry in good faith for the appropriation of the land, exclusively to your own use, and not for the use of any other person?’ To that you answered yes. Was that answer true or untrue at the time it was made? A. Not exactly true.

“Q. Not exactly true? How did you come to answer that question in that way that you made the entry in good faith for the appropriation of the land exclusively to your own use?

“A. Well, money that I would get for the land would be to my benefit.”

Do you remember those questions being asked you and those answers made by you?

A. I remember some of them. The money would be to my benefit. I don't remember all of it.

Q. And that is practically as you understood the transaction all the way through?

A. Yes, sir; it would be to my benefit to have the claim and sell it and get the money, and I needed the money pretty bad at the time, too.

Q. I will ask you whether you remember this ques-

(Testimony of Mrs. Frances A. Clausen.)

tion being asked you, and this answer being made by you:

“Q. Yes; who told you that it would?

“A. Mr. Dwyer told me that it would be to my benefit.”

Do you remember that question being asked, and that answer made by you?

A. I don't remember it in that way. We talked it over, about how much it would bring, and it would be a benefit to me, I thought, to have that much even out of the claim. I can tell you even \$100.00 at that time would have been more than \$2,000.00 to me to-day, for my husband was sick, and I needed money pretty bad.

Q. Now, do you remember this question being asked you, and this answer being made by you:

[1225—895]

“Q. Now, Question 16 of your cross-examination reads, Mrs. Justice, ‘Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?’ Now, the first part of the question, ‘Did you pay out of your own individual funds all of the expenses in connection with the making of this filing?’ You answered, ‘I did’; was that true or untrue at the time it was made?

“A. Untrue.”

Do you remember that question being asked you, and that answer being made by you? A. No, sir.

Q. You don't remember that, do you?

A. No, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. Reading from the same record, I will ask you whether this question was asked you, and whether you made this answer:

“Q. And the other part of the question, ‘Do you expect to pay for the land with your own money?’ Your answer to that, ‘I do’; was that true or untrue?

“A. Well, in one way true, and in another way untrue. I gave a note for the money.

“How did you come to make that entry?

“A. I was told to answer the questions that way.

“Q. By whom? A. Mr. Dwyer.”

Q. Do you remember those questions being asked you, and those answers being made by you?

A. No, sir; I don’t remember that.

Q. You would not say that you did not make those replies?

A. I wouldn’t say I didn’t, for I don’t remember.

Q. “Q. Question 17, ‘Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?’ To that part of the question reading, ‘Where did you get [1226—896] the money with which to pay for this land?’ you answered ‘sold fruit.’ How did you come to answer that question in that way?

“A. I thought it wouldn’t matter where I got the money. I was told it didn’t matter where I got the money so I had it.

“Q. That you sold fruit, was that true or untrue?

“A. That was untrue.”

Do you remember that question being asked?

A. Yes, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. And those answers being made by you?

A. Yes, sir.

Q. And that is as you stated it and as you remember it?

A. Yes, sir; but at the time I expected to sell fruit and pay it, and I didn't think it made any difference about it. That was my intention.

Q. Now, see if this refreshes your recollection: I read from page 412 of the record of the trial I have heretofore referred to:

“Q. Now, Mrs. Justice, when did you get your final receipt and certificate out of the land office?

“A. The day I proved up.

“Q. What did you do with that receipt when you got it?

“A. Why, I made out a contract or deed to secure the money that I had had, and I handed over the final receipt to Mr. Dwyer.”

Do you remember that?

A. Yes, sir.

Q. And that was the fact, was it?

A. Yes, sir. I thought as long as I had the money that they should have the receipt and all, that that would be secure.

Q. “Q. What did I understand you to say?

“A. When I made out the deed or contract, whichever it was, after I had proved up I handed the final receipt over to Mr. Dwyer.”

You have already answered that. That is correct, is it? A. Yes, sir. [1227—897]

Q. And do you remember of your husband coming in the same day; that you sent for him and he came

(Testimony of Mrs. Frances A. Clausen.)

in and signed the same deed or contract at Otto Kettenbach's office, the day you made your proof?

A. Yes, sir.

Q. Now, do you remember whether Mr. Dwyer was there in the next room at the time you signed that?

A. I don't know whether he was in the next room or where he was.

Q. Now, does that refresh your recollection as to whether or not you received \$150.00 at the time you signed that paper?

A. No, sir; I don't remember.

Q. I will read again, continuing from where I have been reading:

"Q. Now, when you signed this paper,"—that is referring to the deed or contract you have been talking about—"what, if anything, did you receive there?

"A. I received \$150.00.

"Q. When next did you see, when did you see this note that you had signed in the morning of that day, earlier in the day?

"A. After I signed that paper.

"Q. Where did you get the note?

"A. I went over to the bank and got it. The Lewiston National Bank."

Do you remember the question being asked, and that answer being made by you?

A. I went over to the bank and got the note.

Q. "Q. How did you happen to go to the Lewiston National Bank to get it?"

A. I believe I answered that.

Q. "A. Because it was in the bank.

(Testimony of Mrs. Frances A. Clausen.)

“Q. How did you know it was in the bank?

“A. Mr. Dwyer had told me it was in the bank.”

That is correct, is it? A. Yes, sir. [1228—898]

Q. “Q. Did you get any written order from Dwyer to get this note? A. No, sir.”

Do you remember that? A. No, sir.

Q. “Q. Who went with you to the bank?

“A. My daughter, Mrs. Wilson.”

Do you remember that question? A. Yes, sir.

Q. And you said you were not acquainted with anybody at the bank?

A. No, sir; I had never met one of the bank officials at that time.

Q. And you asked for your note and they gave it to you; is that correct? A. Yes, sir.

Q. And did Mrs. Wilson get Guy Wilson’s note at that time, do you remember? A. Yes, sir.

Q. And she didn’t make any demand, either, when she got her note; they just handed it to her on her request; that’s correct, is it?

A. I don’t know. I didn’t pay any attention to what she said to them. That was her affair.

Q. Now, this final receipt that you handed over to Mr. Dwyer the day that you made your proof and signed this deed or contract, or whatever it was, did you get that receipt back again?

A. I could have had it back any time I wanted it.

Q. Well, didn’t you get it back?

A. Yes, sir, I got it back, and got my patent.

Q. Now, where did you get it from?

A. The receipt?

Q. Yes.

(Testimony of Mrs. Frances A. Clausen.)

A. I asked Mr. Dwyer for the receipt to get my patent. I had [1229—899] left it in security with the contract for the—

Q. Now, just about the time that O'Fallon and Goodwin came there, don't you remember that you had a talk with Mr. Dwyer, and told him that you had made them a statement, and then he said something about you had better have your final receipt?

A. No, sir; he never told me I had better have it.

Q. Now, do you remember these questions being asked you, at the trial which I have been referring to, page 415:

“Q. What was said there about it by Dwyer, about the matter relating to the conversation there?

“A. I told him that Mr. O'Fallon and another man had come there and asked for a statement, and he said I didn't need to give the statement to anyone in regard to their timber business.

“Q. Who said that? A. Mr. Dwyer.”

Do you remember that question being asked you, and that answer being made by you? A. Yes, sir.

Q. And that was true, was it?

A. Yes, sir, that was true.

Q. The next question:

“Q. Go right along and give the rest of the conversation.

“A. I told him I had given the statement to them, and that they wanted my final receipt, but I didn't have it and he said I could have the final receipt again, and I afterward got it.

“Q. What did Dwyer say, if anything, at that time as to the whereabouts of that receipt?

(Testimony of Mrs. Frances A. Clausen.)

“A. He said they were in the bank.

“Q. Did he mention any bank?

“A. Lewiston National Bank.

“Q. State if you did afterwards get the receipt.

“A. I did. [1230—900]

“Q. Where did you get it?

“A. Well, I am not positive whether I got it of Mr. Dwyer or at the bank, but I think I got it out of the bank.

“Q. About how long after this first visit from Mr. O’Fallon and Mr. Goodwin?

“A. It was not very many days, but I can’t remember the length of time.

“Q. Did you finally deliver up that receipt later?

“A. Yes, sir.

“Q. To whom?

“A. Well, afterwards I made a deed.

“Q. To whom did you deliver the receipt?

“A. Well, I gave the receipt, when I made out the deed; when I made the deed to Mrs. Dwyer for my timber claim, I gave her the receipt then.

And your idea of the transaction now is practically as you stated as I have read it here, is it?

A. Yes.

Q. I say practically; I don’t expect you to remember every word that you said.

A. I don’t, either.

Q. Now, you say you sold your claim to Mrs. Kittie E. Dwyer? A. Yes, sir.

Q. Now, state the circumstances of making that, or the transaction relative to selling that claim.

(Testimony of Mrs. Frances A. Clausen.)

A. Why, she wanted to buy the claim, and I came over to Lewiston and sold it to her.

Q. Now, state how she—state what she said.

A. Oh, I can't remember what was said.

Q. Well, tell it as near as you can.

A. Well, she wanted to buy my claim, and I sold it to her.

Q. Well, did she call you up by telephone and ask you if you [1231—901] wanted to sell it?

A. Yes, sir.

Q. Well, what did you tell her?

A. I told her I would like to sell it.

Q. And what happened next?

A. Why, I sold the claim.

Q. Did you have an arrangement with her over the telephone as to how much you were to get for it?

A. No, sir. I don't talk my business over the telephone.

Q. Well, now, you won't tell me how you did talk, so I was trying to see if I could draw it out from you.

A. I came over to Lewiston and talked with her about selling it, and went to an office and made out a deed. Now, I don't know what office it was, either.

Q. Now, was that all done the same day?

A. Yes, sir.

Q. And how long was that after you made your proof?

A. Well, sir, I can't tell what day of the month or year that that deed was made.

Q. Oh, I know, but couldn't you tell whether it was

(Testimony of Mrs. Frances A. Clausen.)

two days or a week, or six months, or longer than that?

A. No, sir, I can't tell how long. Perhaps the deed would show. [1232—902]

Mr. GORDON.—Q. Now, who was present—where did you make the deed to Mrs. Dwyer, Mrs. Clausen?

A. I told you I didn't know the man that made out the deed, or the office; I have forgotten it. It will tell on the deed the man's name, but I can't tell you.

Q. Now, was that the first deed you made, or was that the second?

A. That was the first deed that I made.

Q. And the other, you didn't know whether that was a contract or a deed?

A. I supposed it to be a contract to secure the money.

Q. And when you made this second affair, whether it was a deed, or whatever it was, did you receive any more money?

A. Yes, sir, I received my money then.

Q. How much did you receive?

A. Well, I have forgotten the amount of money at that time; it was over \$1,000.00, and I paid back to the bank the money that I had kept, the balance. I have forgotten what I paid on the claim.

Q. Was this paid you by Mrs. Kittie Dwyer's check, or how? A. Yes, sir.

Q. Then, she gave it all to you in one check, did she?

A. She gave me a check and I got it cashed at the

(Testimony of Mrs. Frances A. Clausen.)

bank, and then I put back the amount of the money to the bank that I had borrowed, that I had had, all the expenses and everything, and the balance I kept.

Q. That was the day you made the deed to Mrs. Dwyer, was it? A. Yes, sir.

Q. And you got that money after cashing the check she gave you? A. Yes, sir.

Q. They took out the amount for taxes, did they not, at that time?

A. Yes, sir, they took out the amount for taxes.

Q. That was about \$17.00, was it not?
[1233—903]

A. I can't remember,—seventeen and something; I don't remember just how much it was. I never try to remember all those little details. If I ever have anything to do with the Government again I will carry a little book and write down every word I say so I can give the evidence straight.

Q. Wasn't this in Mr. Dwyer's office that you made this deed? A. No, sir, it was not.

Q. Now, was there any talk with you and Mr. and Mrs. Dwyer at the time you made this second paper that you have referred to about the first paper being recorded?

A. I don't remember any such talk.

Q. Now, I will read from the same record, at page 418. From the context, they have been inquiring about that first paper that you called a deed or contract. "Question. What did Dwyer say about it never having been put on record?" "Answer. He didn't say anything about it; he didn't say anything

(Testimony of Mrs. Frances A. Clausen.)

about it not being on record.” “Question. What did you say about it not being on record?” “Answer. I said it never was on record, and so I made another deed.” “Question. How did you know it never was on record? How did you learn it never was on record?” “Answer. I said to Mrs. Dwyer, I don’t know how I could make out a deed if it was on record, but it wasn’t on record.” “Question. How did you know it wasn’t on record?” “Answer. Well, they said it was not on record.” “Question. That is what I want to know. He said it was not on record?” “Answer. I can’t remember whether it was Mr. or Mrs. Dwyer.” “Question. It was in the presence of Mr. Dwyer?” “Answer. Yes, it was in his presence, if it was in his office.” “Question. Did they give you back the first paper?” “Answer. No, I never had the first paper back.” “Question. Did they offer to give it back to you?” “Answer. Mrs. Dwyer said she would give it back to me, but I never went after it.” “Question. Did Mr. Dwyer draw up the deed, or did you go to this other office to have the [1234—904] deed drawn up?” “Answer. I went to the other office to have the deed drawn up, and I paid the taxes on the timber claim and made out the deed.” “Question. How much taxes did you pay?” “Answer. Seventeen dollars and something.” “Question. Where did you get the money to pay the taxes?” “Answer. They took it out of the money I was to get for the claim there in making the second deed.” “Question. They held out seventeen dollars?” “Answer. Yes, sir.” Do you re-

(Testimony of Mrs. Frances A. Clausen.)

member those questions being asked you and those answers made by you?

A. I never answered in that way, I know, about the second deed; I never said I had a first deed.

Q. Do I understand then that this record that I have read from misquotes you?

A. Well, I don't remember saying any such thing that there was a second deed, for I never called it a second deed.

Q. Would you say you didn't make those statements?

A. No, I wouldn't say I didn't. The deed I made to Mrs. Dwyer was the first deed. If the first was a deed, that paper, I didn't know it; I supposed it was a contract.

Q. Now, I continue to read the next question and ask you whether or not this question was asked you and whether or not you made the answer which I shall read: "Question. What amount did they pay you at the time you executed the deed?" Answer. The second deed called for \$950.00, if I remember right the amount." Do you remember that question being asked you and that answer made by you?

A. I don't remember how much the amount was. It might have been asked; I don't remember.

Q. Now, that refers to the second deed. That wasn't in the question. I will read the question again: "Question. What amount did they pay you at the time you executed the deed?" "Answer. The second deed called for \$950.00, if I remember right the amount." "Question. I will ask the witness,

(Testimony of Mrs. Frances A. Clausen.)

Mrs. Justice, did I misunderstand, did you or did you not state before that you were getting under the new [1235—905] deed, that you were to get \$75.00 for it? Was I in error? Did you state how much you were to get for the claim?" "Answer. Do you mean the first time or this time?" "Question. Yes, this time?" "Answer. No, not this time." "Question. Then that is my mistake. How much was they to pay you at this time?" "Answer. Well, I got \$75.00 for making out the deed." Is that correct?

A. I don't remember how much it was.

Mr. GORDON.—Now, we will take a little rest, Mrs. Clausen.

WITNESS.—Could you adjourn until after dinner?

Mr. GORDON.—Yes.

WITNESS.—I will come back after dinner.

At this time a recess was taken until one o'clock, at which time the taking of testimony was resumed, with Mrs. Clausen on the witness-stand.

Mr. GORDON.—Mrs. Justice, did I show you this affidavit the other day and ask you if you signed it (showing witness paper)?

A. I believe you did.

Q. I show you affidavit subscribed and sworn to by Frances Justice May 5, 1905, and ask you if that is your signature to that affidavit?

A. That is my signature.

Q. Was Mr. O'Fallon present at the time that that affidavit was signed, was Mr. O'Fallon and Mr. Goodwin present?

A. Was that the one they made out at my house?

(Testimony of Mrs. Frances A. Clausen.)

Q. Yes.

A. Yes, sir, Mr. O'Fallon and Goodwin was there.

Mr. GORDON.—We offer the affidavit in evidence, and read the same into the record.

WITNESS.—They had me scared stiff when I made that affidavit, and I don't know what was in there; they wrote that down and I didn't read it over. [1236—906]

Mr. GORDON.—Q. You signed it, did you?

A. Yes, sir, but I don't know what is in there.

Mr. GORDON.—(Reading:)

[Exhibit No. 35.]

“State of Washington,

County of Asotin,—ss.

I, Frances A. Justice, being of legal age, and first duly sworn, depose and say:

My postoffice address is Clarkston, Washington. I am the identical party who made a timber and stone entry in the Lewiston, Idaho, land district and at the Lewiston Land Office. My son Fred E. Justice, deceased, also made a similar entry at the same time. My claim was in Tp. 38 N. R. 6 E., in Section 19, and contained about 120 acres, more or less.

I was located by William Dwyer of Clarkston, Washington, and paid him \$100.00 for locating me. This money was paid to him in Lewiston, Idaho, two days before final proof was made. I went over the land with Mr. Dwyer, and several other parties located claims at the same time, among whom were Eugene Hopper and my husband; and Mrs. White, Miss Elizabeth Kettenbach, Edward O'Brien, (who

did not take a claim), Geo. H. Kester and wife, of Lewiston, Idaho. I did not pay any of the expenses of the trip. We left Lewiston October 9, 1903. I understood Mr. Dwyer paid the expenses of the trip.

I made my entry at Lewiston, Idaho, on April 25, 1904, a line having been formed at the land office there about a week before my entry was made. The parties who went with me to examine lands were in the line and made entries, except Mr. O'Brien and my husband.

The location fee I paid William Dwyer was returned to me by Mr. Dwyer. I did not give him a note for the money. The location fee was returned to me when I received the money to offer final proof.

The Four hundred Dollars I used to make final proof was handed me by William Dwyer probably two hours before I went up to the land [1237—907] office to make final proof. I gave the note to Geo. H. Kester at the time I got the money from Mr. Dwyer. The note was handed into the bank, but I cannot recall in whose favor the note was made. I wanted to borrow the money and Mr. Dwyer told me where he could get the money for me. At the time he brought the money to me, that is, the Four Hundred Dollars, he brought the note for me to sign and I signed it; and I supposed at the time I was borrowing the money from the Lewiston National Bank. I cannot recall the exact amount of the note, or the money received, but I received enough money to pay Mr. Dwyer his \$100.00 location fee and for the land and had (\$6.00) Six Dollars left, which I returned to Mr. Dwyer after *after* making final proof.

I signed what I understood was a contract, that

is, an instrument of writing, conveying the land I proved up on to the Kester & Kettenbach in the bank, the same day I made final proof and after making final proof. Just after I signed the instrument of writing spoken of William Dwyer handed me One hundred and Fifty Dollars (\$150.00) in cash. Mr. Dwyer handed me the money in the hall of the building where the Notary Public took the acknowledgment. The same day, and after executing the aforesaid instrument of writing I returned to the Lewiston National Bank and demanded the return of the aforesaid note. The note was returned by Geo. H. Kester. I took the note and destroyed it.

Before going out to examine the land I had a talk with Mr. Dwyer and told him I would take a claim if I knew where I could sell it when I proved up. He said he thought he knew where he could find a purchaser, and he told me these parties would not pay over One hundred & Fifty Dollars and the expenses of the location. I went up to examine the claim with the intention of selling or disposing of my claim to the purchaser spoken of by Mr. Dwyer.

I understood the instrument in writing above spoken of was a contract or agreement that I would execute a deed for the land when I should get my patent, as I did not think I could execute a deed until I received my patent.

FRANCES JUSTICE. [1238—908]

Subscribed and sworn to before me this 5th day of May, 1905.

FRANCIS M. GOODWIN,
Spl. Agt. G. L. O."

(Testimony of Mrs. Frances A. Clausen.)

The said above affidavit was thereupon marked by the stenographer as Exhibit 35.

Mr. TANNAHILL.—The affidavit just offered in evidence is objected to on the ground that it is irrelevant, incompetent and immaterial, as the witness states that it was made under duress and threats and menace, and that the affidavit is also untrue, and an effort by the Government to contradict its own witness. [1239—909]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Clausen, will you state in what way you was treated when Mr. Goodwin and Mr. O'Fallon had you sign this affidavit, what they did, and what they said to you, as well as you can remember?

A. Why, they came there to the house—shall I state it just from the start as it was?

Q. Yes.

A. They came there to the house and wanted to know if I was alone, and said they was sent there by the Government to get a deposition from me, and they went and looked in every room in the house to see whether there was anyone in the house that could hear it, and they asked me questions, and whenever I would try to tell how it was Mr. O'Fallon said, "Look out, Mrs. Justice, you are evading the truth; we know just how that was and you are not telling it as it was."

Q. Did he tell you how it was?

A. Yes, he would tell how it was, and would say, "That is the way it is." And the next question he

(Testimony of Mrs. Frances A. Clausen.)

would ask, it was the same way, "Now, look out; you are evading the truth. We have found out all about this; we know there was a prior agreement, and you was to get \$150.00," and all that sort of bosh, and wouldn't let me tell it how it was. I went to see a lawyer about this, and found out about it, and he told me to go on the stand and tell my story the way it was, that I had a right, that I was a free-born citizen, and that I had a right to tell my story and not be bluffed into telling things that wasn't so.

Q. I will read over this affidavit, Mrs. Clausen, and you listen to it so that you will be able to tell me what part of it is true and what part of it isn't true. (Reading:) "My postoffice address is Clarkston, Washington. I am the identical party who made a timber and stone entry in the Lewiston, Idaho, land district, and at the Lewiston land office. My son Fred E. Justice, deceased, also made a similar entry at the same time. My claim was in township 38 north, range 6 east [1240—910] in section 19, and contained about 120 acres, more or less." Now, is the description of the land that is in that affidavit something that you gave them, or was it something they put down themselves?

A. They asked me how much it was, and I told them I wasn't sure about it, and they said they had found out it was less than a quarter section, they knew how much it was, and they marked it down, because I didn't remember.

Q. (Reading:) "I was located by William Dwyer, of Clarkston, Washington, and paid him

(Testimony of Mrs. Frances A. Clausen.)

\$100.00 for locating me. This money was paid to him in Lewiston, Idaho, two days before final proof was made." Do you remember of stating that to them, that the location fee was paid before you made final proof?

A. No, I don't remember about that.

Q. What was the fact about that?

A. I got the money the day I made proof.

Q. And paid the location fee that day?

A. Yes.

Q. (Reading:) "I went over the land with Mr. Dwyer, and several other parties located claims at the same time, among whom were Eugene Hopper and my husband, and Mrs. White, Miss Elizabeth Kettenbach, Edward O'Brien, who did not take a claim, George H. Kester and wife, of Lewiston, Idaho. I did not pay any of the expenses of the trip. We left Lewiston October 9, 1903. I understood Mr. Dwyer paid the expenses of the trip. I made my entry at Lewiston, Idaho, on April 25, 1904, a line having been formed at the land office there about a week before my entry was made. The parties who went with me to examine lands were in the line and made entries, except Mr. O'Brien and my husband. The location fee I paid William Dwyer was returned to me by Mr. Dwyer. I did not give him a note for the money. The location fee was returned to me when I received the money to offer final proof." Now, do you remember of every saying that after you paid Mr. Dwyer he returned the location fee to you? [1241—911]

(Testimony of Mrs. Frances A. Clausen.)

A. I don't remember any such thing.

Q. That is not a fact, is it?

A. No, sir, and Mr. Kester and Mrs. White and those didn't go to the claim at the time I did, but I met them when I was coming home; they were going up when I was coming home, they were going up when I was coming home. They didn't go with me; I met them going when I came back.

Q. And did you tell Mr. Goodwin and Mr. O'Fallon that was the way of it?

A. Yes, sir, I told them I met them on the way going up.

Q. Then, the way they put it in your affidavit, that they went with you, is not true? A. No, sir.

Q. (Reading:) "The four hundred dollars I used to make final proof was handed me by William Dwyer probably two hours before I went up to the land office to make final proof. I gave the note to George H. Kester at the time I got the money from Mr. Dwyer, The note was handed into the bank, but I cannot recall in whose favor the note was made. I wanted to borrow the money and Mr. Dwyer told me where (when) he could get the money for me. At the time he brought the money to me, that is, the four hundred dollars, he brought the note for me to sign, and I signed it, and I supposed at the time I was borrowing the money from the Lewiston National Bank. I cannot recall the exact amount of the note or the money received, but I received enough money to pay Mr. Dwyer his \$100.00 location fee and for the land and had \$6.00 left, which I returned to Mr. Dwyer

(Testimony of Mrs. Frances A. Clausen.)

after making final proof. I signed what I understood was a contract, that is, an instrument in writing, conveying the land I proved up on to the Kester and Kettenbach in the bank the same day I made final proof and after making final proof. Just after I signed the instrument in writing spoken of William Dwyer handed me \$150.00 in cash.” Now, did you tell Mr. Goodwin and Mr. O’Fallon that you conveyed this land to Kester and Kettenbach?
[1242—912]

A. I did not.

Q. And the affidavit in regard to that is not true?

A. No, it is not.

Q. You told them you gave them a contract securing the money you borrowed?

A. I told them I gave a contract to secure the money that I borrowed, and I didn’t give a note to Mr. Kester; I didn’t know Mr. Kester at the time. I gave the note,—the note was made out to Mr. Dwyer, and I had never met Mr. Kester at that time.

Q. (Reading:) “Mr. Dwyer handed me the money in the hall of the building where the notary public took the acknowledgment. The same day, and after executing the aforesaid instrument of writing, I returned to the Lewiston National Bank and demanded the return of the aforesaid note. The note was returned by George H. Kester. I took the note and destroyed it.” Do you remember what you told them in regard to that?

A. I told them I didn’t know who it was gave me the note. I know none of the men in the bank and

(Testimony of Mrs. Frances A. Clausen.)

I don't know which one handed me the note.

Q. (Reading:) "Before going out to examine the land I had a talk with Mr. Dwyer and told him I would take a claim if I knew where I could sell it when I proved up. He said he thought he knew where he could find a purchaser, and he told me those parties would not pay over \$150.00 and the expenses of the location. I went up to examine the claim with the intention of selling or disposing of my claim to the purchaser spoken of by Mr. Dwyer." Did you tell them anything like that?

A. No, I did not.

Q. And that part of that affidavit isn't true?

A. No, sir, it is not.

Q. (Reading:) "I understood the instrument in writing above spoken of was a contract or agreement that I would execute a deed for the land when I should get my patent, as I did not think I could execute a deed until I received my patent." Did you tell them anything like that? [1243—913]

A. No, sir; I did not, for I didn't know who I would sell it to. I told them that I had secured the money that I got.

Q. Then, you had no agreement with Mr. Dwyer or anyone else to sell the land before you made final proof? A. I had no agreement.

Q. Do you remember of telling Mr. Dwyer before, or about the time you made final proof that you needed some money, and that you wouldn't be able to hold your land very long, that you would like to sell it as soon as you could? A. Yes, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. Do you remember of telling Mr. Dwyer, about the time you made final proof, or directly afterwards, that your husband was sick and that you needed some money and would like to get \$150.00, or something of that kind?

A. Yes, sir, I needed money just as bad as a body could need it at the time he was sick; I was in debt so heavy and no money on hand, and I needed money very badly.

Q. And Mr. Dwyer told you he would try to get you some money and add it to the other money and take security on the claim, something like that?

A. Something like that; I don't remember just how it was worded.

Q. But anyway you got the \$150.00, Mr. Dwyer got the \$150.00 for you, and you signed some kind of an instrument, which you understood was giving security on the claim for the entire amount, a contract or something which made the claim security for the amount that you had gotten from Mr. Dwyer to make final proof and also included the \$150.00. that is the way you understood it, is it?

A. Well, it was something like that, that he would try to get me some money on it.

Q. Then, after while,—you kept the land something like a year and a half before you finally sold it to Mrs. Dwyer, did you not? [1244—914]

A. I can't remember how long it was that I kept the land; I don't remember.

Q. You kept it until—

A. The deed would tell how long.

(Testimony of Mrs. Frances A. Clausen.)

Q. You kept it until you executed the deed to Mrs. Dwyer? A. Yes.

Q. And you was at liberty to sell it to anyone you pleased in the meantime if you got a buyer who would give you more money for it, would give you a price that was satisfactory to you?

A. I had a right to sell the claim in fifteen minutes after I proved up if I chose to do so.

Q. The only obligation you was under to Mr. Dwyer or anyone else was to return the money you had borrowed from them?

A. That was all the obligation I was under to anybody.

Q. The affidavit you made when you filed your sworn statement, Mrs. Clausen, was to the effect that "I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That affidavit was true, was it?

A. It was true; it was not a benefit to anybody but myself, I don't see how it was.

Q. And it was true at the time you made it, and also true at the time you made your final proof?

A. Yes, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. And it is still true?

A. I never went into it trying to do anything that wasn't just right. [1245—915]

Q. Now, Mrs. Justice, you stated that when Mr. Ruick talked to you, threatened to indict you, that he held a paper in your hands and made you make your evidence conform to that paper he held, that affidavit, I believe you expressed it, that Mr. O'Fallon had you make. I will ask you if that was this affidavit which you have identified, marked Complainant's Exhibit 35?

A. Yes, sir. And he told me that I could be indicted if I didn't give my testimony just like that.

Q. And he told you that if this affidavit was false that you could be indicted for it? A. Yes, sir.

Q. And that if you didn't give your evidence just like this affidavit that you could be indicted?

A. Yes, sir; he had me frightened so I didn't know who I was or what my name was for awhile. He kept me there two days talking to me like that.

Q. Now, when Mr. O'Fallon and Mr. Goodwin came over to your house there, how long was that after your husband had died?

A. It was just after my son died a short time, and I was pretty near wild anyway; my husband died, and then in two months my son was killed on the wire.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mrs. Justice, you remember testifying at Mos-

(Testimony of Mrs. Frances A. Clausen.)

cow in November, 1906, at the trial of William Dwyer for subornation of perjury, do you not?

Mr. TANNAHILL.—The first trial at Moscow. She will understand that better.

Mr. GORDON.—Q. You remember testifying at that trial, do you? [1246—916]

A. I wasn't at the first trial at Moscow.

Q. That was Mr. Robnett's trial, but I mean the first trial of Mr. Dwyer.

A. I think I was at the first trial of Mr. Dwyer.

Q. I will ask these few questions, and then I will be through. Do you remember whether or not you were asked the questions which I shall read? I read from the record in case 1606, referred to in the stipulation, page 232: "Question. That is all I am asking for, Mrs. Justice, to state what the arrangement, if any was between you and Mr. Dwyer, what was said, what was the agreement, if any?" "Answer. Well, I was to go and take the claim." "The Court. Well, was that all that was said? You were just to take the claim?" "Answer. Well, no; I was to receive a certain amount for the claim." "Question. For what?" "Answer. For the timber claim." "Question. You were to receive a certain amount for the timber claim?" "Answer. Yes, sir." "Question. What were you to receive for the timber claim?" "Answer. \$150.00." "Question. Through whom were you to receive this \$150.00?" "Answer. Well, Mr. Dwyer got the money for me, and I made a contract of that timber after proving up on it." "Question. You made a contract as to what you

(Testimony of Mrs. Frances A. Clausen.)

would do on the timber after you proved up on it?"

"Answer. I never made the contract, only a verbal contract before I proved up on the timber." "Ques-

tion. That is it, that is just what I want to know.

Now, what was the verbal contract, between you and Mr. Dwyer before you went up there to the timber?"

"Answer. That I would accept \$150.00 for my share in the claim." "Question. For your right?" "An-

swer. For my right." "Question. For your timber right?" "Answer. Yes, sir." "Question. Were

you to be to any expense in the matter?" "Answer. I was to have \$150.00 clear of all expenses." "Ques-

tion. Did you have this arrangement with Mr. Dwyer before you went up to look at the timber?"

"Answer. I did." Do you remember those questions being asked you and whether you made those answers to them? [1247—917]

A. I remember some of them.

Q. And the others you don't? A. No, sir.

Q. Will you say whether or not your answers that you remember were true or not?

A. They were not true, but they were just as I was compelled to answer them.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Now, Mrs. Justice, regardless of what you was compelled to answer over there, and regardless of any answer you may have made or any statement you made in the affidavit for Mr. Goodwin and Mr. O'Fallon, and regardless of anything you might have

(Testimony of Mrs. Frances A. Clausen.)

testified to either in the trial of the United States against William Dwyer for subornation of perjury, or the United States against William Dwyer, George H. Kester and William F. Kettenbach, charged with conspiracy, the facts, as you intend to testify to them, and as you say is true, is that you did not have a prior agreement to sell your land, or any agreement with Mr. Dwyer or Mr. Kester or Mr. Kettenbach or anyone else to sell your land before you made final proof?

A. I did not have, and Mr. Kettenbach and Mr. Kester are men that I never met before that, and I didn't have any prior agreement with Mr. Dwyer.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all. Thank you, Mrs. Justice.

WITNESS.—And if I would see Mr. Kettenbach to-day I wouldn't know the man.

Mr. GORDON.—Mr. Tannahill, Monday is a holiday. Shall we adjourn?

Mr. TANNAHILL.—Oh, no. Let's go right ahead. [1248—918]

The SPECIAL EXAMINER.—You are willing to go ahead, are you?

Mr. TANNAHILL.—Yes.

At this time the hearing was adjourned until Monday, September 5th, 1910, at ten o'clock A. M. [1249—919]

On Monday, the 5th day of September, 1910, at ten o'clock A. M., the hearing was resumed.

By agreement of counsel, an adjournment was

taken until to-morrow morning at ten o'clock A. M.
[1250—920]

On Tuesday, the 6th day of September, 1910, at ten o'clock A. M., the hearing was resumed.

**[Stipulation Re Decease, and Offer of Original
Entry Papers of Fred E. Justice et al.]**

Mr. GORDON.—It is stipulated in open court by and between the parties that Fred. E. Justice, who filed timber and stone lands sworn statement No. 1324, is dead.

Mr. GORDON.—We offer in evidence the original land office files, being the timber and stone entry made by Fred. E. Justice, viz.: The timber and stone lands sworn statement made by Fred. E. Justice April 25th, 1904, the nonmineral affidavit of Fred. E. Justice, bearing the same date, the testimony of Fred. E. Justice given at final proof, dated July 13th, 1904, the cross-examination of Fred. E. Justice taken at the same time, the testimony of the witnesses at final proof, and the cross-examination of said witnesses, the receiver's receipt and the register's certificate, dated July 13th, 1904, and a certified copy of the patent issued to Fred. E. Justice, dated December 31st, 1904, all relating to the entry of the east half of the northeast quarter and the east half of the southeast quarter of section 20, in township 38 north, of range 6 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of the papers in evidence in support of bills No. 406 and 407, upon the

ground and for the reason that the entry is not involved in either of these two particular actions. And the defendants severally object to the admission of the final proof papers in evidence in support of either of the bills or actions, upon the ground that they are matters referring to the final proof, occurring long after the filing of the sworn statement, and are irrelevant, incompetent and immaterial. [1251—921]

Said documents were thereupon marked by the Reporter, as Exhibits 36, 36A, 36B, 36C, 36D, 36E, 36F, 36G, 36H, 36I, 36J, 36K, 36L, and 36M.

Mr. GORDON.—It is stipulated in open court by and between the parties that Jackson O'Keefe, who filed timber and stone lands sworn statement No. 1330, in the land office at Lewiston, Idaho, is dead.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement signed Jackson

April

O'Keefe, dated October 25th, 1904, filed in the land office at Lewiston, Idaho, on that date, the nonmineral affidavit of Jackson O'Keefe, dated April 24th, 1904, the testimony of Jackson O'Keefe given on final proof July 11th, 1904, the cross-examination of Jackson O'Keefe taken at final proof, the testimony of the witnesses at final proof, and the cross-examination of said witnesses, the receiver's receipt and the register's certificate, dated July 11th, 1904, the notice for publication, a certified copy of the patent issued to Jackson O'Keefe, and dated December 31st, 1904, all relating to the entry of the west half of the southeast quarter and the east half of the

southwest quarter of section 23, township 38 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any of the papers in evidence in support of bills No. 406 and 407, upon the ground that the entry is not involved in either of those actions, and this evidence is irrelevant and immaterial. And the defendants further object to the admission of the final proof papers in evidence in support of either of the actions, upon the ground that they are matters occurring long after the filing of the sworn statement, and relate strictly to the final proof, and as irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 37, 37A, 37B, 37C, 37D, 37E, 37F, 37G, 37H, 37I, 37J, 37K, 37L, and 37M. [1252—922]

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Joseph B. Clute, dated March 24th, 1903, filed in the land office at Lewiston, Idaho, on March 24th, 1903, the nonmineral affidavit of Joseph B. Clute, bearing the same date, the notice for publication filed the same date, the testimony of Joseph B. Clute given on final proof, dated June 17th, 1903, the cross-examination of Joseph B. Clute given at final proof on the same date, the testimony of the witnesses given at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 17th, 1903, said papers being the original land office files, and a certified copy of the patent issued to

Joseph B. Clute, dated August 3d, 1904, all of said papers relating to the entry of the south half of the northeast quarter and the east half of the southeast quarter of section 26, in township 39 north, of range 3 east, Boise meridian. We also offer a certified copy of said last mentioned receiver's receipt, dated June 17th, 1903, recorded in the office of the recorder of Shoshone County at the request of George H. Kester August 10th, 1903. We also offer a certified copy of a deed dated June 17th, 1903, made, executed and acknowledged by Joseph B. Clute, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1,000.00, the south half of the northeast quarter and the east half of the southeast quarter of section 26, township 39 north, of range 3 east, Boise meridian. Said deed is acknowledged before H. K. Barnett, a Notary Public, June 17th, 1903, and recorded in the office of the recorder of Shoshone County at the request of George H. Kester, August 10th, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the papers in evidence in support of bills No. 388 and 407, upon the ground that it is irrelevant and immaterial, the entry not being involved in either of these actions as the bills are amended, and as irrelevant and immaterial. And the defendants severally object to the admission of any of the final proof papers in evidence in support of [1253—923] either of the actions, upon the ground that they are matters relating to the final proof, occurring long after the

filing of the sworn statement, and irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 38, 38A, 38B, 38C, 38D, 38E, 38F, 38G, 38H, 38I, 38J, 38K, 38L, 38M, 38N, 38O, and 38P.

Mr. GORDON.—We offer in evidence the original land office files in the timber and stone entry of William E. Helkenberg, being the timber and stone lands sworn statement of William E. Helkenberg, dated October 26th, 1904, filed in the land office at Lewiston, Idaho, on that date, the nonmineral affidavit of William E. Helkenberg, bearing the same date, the testimony of William E. Helkenberg given at final proof, dated January 20th, 1905, the cross-examination of William E. Helkenberg, dated the same date, the testimony of the witnesses at final proof, and the cross-examination of them, the notice of publication, the receiver's receipt and the register's certificate, dated January 20th, 1905, together with a certified copy of the patent issued to William E. Helkenberg, and dated May 29th, 1907, all relating to the entry of the northwest quarter of the southwest quarter of section 28, and the northeast quarter of the southeast quarter and the southeast quarter of the northeast quarter of section 29, in township 39 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the papers in evidence in support of bills No. 388 and 407, upon the ground that the entry is not involved in

either of these actions, and they are irrelevant and immaterial. The defendants also severally object to the admission of any of the final proof papers in evidence in support of either of the bills, upon the ground and for the reason that they relate strictly to the final proof and occurring long after the filing of the sworn statement, and irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits [1254—924] 39, 39A, 39B, 39C, 39D, 39E, 39F, 39G, 39H, 39I, 39J, 39K, 39L, and 39M.

Mr. GORDON.—We offer in evidence the original entry papers filed in the land office at Lewiston, Idaho, relating to the timber and stone land entry of Wren Pierce, being the timber and stone lands sworn statement of Wren Pierce dated March 21st, 1903, filed in the land office at Lewiston, Idaho, on the same date, the notice of publication, dated and filed the same date, the nonmineral affidavit of Wren Pierce, dated March 21st, 1903, and filed the same date, the testimony of Wren Pierce given at final proof, dated June 17th, 1903, the cross-examination of Wren Pierce at final proof, of the same date, the testimony of the witnesses given at final proof, and the cross-examination of them, made at the same time, the receiver's receipt and the register's certificate, dated June 17th, 1903, a certified copy of the patent issued to Wren Pierce, and dated August 3d, 1904, all relating to the entry of the southeast quarter of section 22, in township 39 north, of range 3 east, of Boise meridian. We also offer in evidence

a certified copy of the receiver's receipt last mentioned, dated June 17th, 1903, and recorded in the office of the recorder of Shoshone County, Idaho, at the request of William F. Kettenbach, June 20th, 1903. We also offer in evidence a certified copy of a mortgage made and executed by Wren Pierce and wife May Pierce, June 17th, 1903, to Clarence W. Robnett, conveying the southeast quarter of section 22, in township 39 north, of range 3 east, Boise meridian, to secure a promissory note of even date, made by Wren Pierce and May Pierce, in the sum of \$728.75, payable to the order of Clarence W. Robnett in one year after date, with interest at the rate of one per cent. per month. Said mortgage is acknowledged before John E. Nickerson, a notary public for Nez Perce County, June 17th, 1903, and recorded in the office of the recorder of Nez Perce County and Shoshone County at the request of William F. Kettenbach June 20th, 1903. We also offer in evidence a certified copy of a deed made and executed by Wren Pierce and his wife May Pierce, dated May 31st, 1904, conveying to William F. [1255—925] Kettenbach, in consideration of \$1.00, the land last above described, acknowledged before W. H. Schildts, a notary public for Nez Perce County, May 31st, 1904, and filed for record at the request of William F. Kettenbach in the office of the recorder of Shoshone County, June 3d, 1904.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the admission of the documents in evidence in support of bills 406 and 407,

upon the ground that the entry is not involved in either of these actions, and irrelevant and immaterial. The defendants also severally object to the admission in evidence of either of the or any of the final proof papers in support of either of the bills or actions, upon the ground that they are matters relating strictly to the final proof, made long after the filing of the sworn statement, and are irrelevant, incompetent and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 40, 40A, 40B, 40C, 40D, 40E, 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, 40O, and 40P. [1256—926]

**[Stipulation Re Decease, and Offer of Testimony of
Norman Jackson.]**

Mr. GORDON.—It is stipulated in open court by and between the parties hereto that Norman Jackson who testified as a witness on behalf of the United States in a criminal action then pending in the case entitled *The United States of America vs. William F. Kettenbach, George H. Kester and William Dwyer*, in the United States District Court for the District of Idaho, Northern Division, at Moscow, Idaho, in May, 1907, is dead.

We offer in evidence the testimony of Norman Jackson, given at said trial, which is as follows, and is reported in the transcript of the record referred to in the stipulation heretofore made by and between the parties, No. 1605, at page 994, et seq.

Mr. TANNAHILL.—The defendants severally object to the admission of the evidence of the witness, upon the ground and for the reason that the

evidence then given was in a criminal action then pending in the said District Court, the same being another division from the one in which this action is pending, to wit: The action in which the said witness testified was in the United States District Court for the Northern Division of Idaho; and the actions now pending are in the United States Circuit Court for the District of Idaho, and the evidence is incompetent, irrelevant and immaterial for any purpose, the entry of the witness not being involved in either of the actions; and upon the further ground that the evidence of one witness in a certain action cannot be read into the record in another action and be considered as evidence therein. And the defendants, The Idaho Trust Company, the Lewiston National Bank, of Lewiston, Idaho, the Clearwater Timber Company, the Western Land Company, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, and the Potlatch Lumber Company, also severally object to the admission of any part or portion of the evidence of the witness Norman Jackson given in said criminal action, in this particular action, upon the same ground as heretofore stated in the objection of the defendants William F. Kettenbach, George H. Kester and William Dwyer, and upon the [1257—927] further ground that the defendants last named were not parties to the criminal action, were not present with their attorney to cross-examine the said witness, had no opportunity to cross-examine him, and cannot be bound by the evidence of the witness then

(Testimony of Norman Jackson.)

given in that particular action.

The following is a copy of the testimony of Norman Jackson, offered by Mr. Gordon on behalf of the complainant:

[Testimony of Norman Jackson, for Complainant.]

“NORMAN JACKSON, a witness called and sworn for the prosecution, testified as follows on

Direct Examination by Mr. RUICK.

Q. Mr. Jackson, where do you reside?

A. At Weiser, Idaho.

(WITNESS continuing:)—I have resided in Idaho seven years; at one time I held the position of Chief Clerk of the State Land Board of the State of Idaho; from January, 1903, to January, 1905, under former Governor Morrison's administration.

My duties as chief clerk were to conduct State land sales, selling State land and in a general way renting and supervising State lands. I had general supervision under the direction of the board. I carried out the orders and instructions of the board.

Q. Now, do you recall the incident of certain selections for the State institutions of lands that were open to settlement in the Lewiston Land District in February, 1904? A. In February?

Q. Yes. A. In April; wasn't it in April?

Q. They were open to the public in April, and open to the state in February? A. Yes, sir.

Q. You recall the incident, do you not?

A. Yes, sir.

Q. You later filed a list of state selections in the

(Testimony of Norman Jackson.)

land office on [1258—928] behalf of the state?

A. Yes, sir.

Q. Now, who directly, who was employed by the State in making the selections?

A. Mr. Goldsmith.

Q. Who was employed under Mr. Goldsmith and hired by the State for the purpose also?

A. I think there were either seven or eight men; they were Melvern Scott, William Dwyer, Mr. J. B. Lafferty, Mr. Snyder—I don't know his initials—of Pierce City, of that section in there and Mr. Bliss, of Clarkston.

Q. Edwin Bliss?

A. I don't know his first name, and William Dwyer, I don't recall the names of the others.

Q. Who hired all these parties for that purpose?

A. Mr. Goldsmith.

Q. The selection was left entirely to him by you?

A. Yes, sir.

Q. Who furnished you with the list upon which you filed? A. Mr. Goldsmith.

Q. You took his lists of land, then, as he furnished them to you and you made such filings in the land office in accordance therewith? A. Yes, sir.

Q. Did you add to or subtract from those lands yourself in any way? A. No, sir.

Q. As they were furnished you by Mr. Goldsmith?

A. No, sir.

Q. Now, do you recall the circumstance of your being there at Lewiston on the day on which you made these filings, upon the behalf of the State?

(Testimony of Norman Jackson.)

A. Yes, sir. [1259—929]

Q. Do you recall the day from memory?

A. Well, only as I have read. I remember it was the 25th of April, was the day when the State could file.

Q. No; that is when they were open.

A. Oh, no, when I was there.

Q. I will state to you for your information that the record shows it was on the 21st that you filed.

A. I don't remember those dates absolutely.

Q. But you recall the occurrence of your filing?

A. Yes, sir.

Q. Now, did you have a conversation with the defendant here, Mr. George H. Kester, relative to the matter of certain selections? A. Yes, sir.

Q. At or about that time? A. Yes, sir.

Q. Now, you may state how it came about that you had the conversation. You need not state what was told you by any other person, but how did it come that you saw Mr. Kester and had this conversation with him?

Mr. FORNEY.—We object to it for the reason that it is incompetent, irrelevant and immaterial in this, that it does not tend to prove any of the allegations of the indictment or connect the defendants in any manner with any of the overt acts set forth; further, that it refers to the lands of the State of Idaho, refers to the lands belonging to the State of Idaho, and not of the United States Government. These defendants are accused of defrauding the

(Testimony of Norman Jackson.)

United States Government, and not the State of Idaho.

Mr. RUICK.—It refers to an effort to get lands also fraudulently from the State of Idaho.

Mr. TANNAHILL.—We object to that, if your Honor please.

The COURT.—Objection overruled. [1260—930]

To which ruling of the Court the defendants then and there excepted, which exception was allowed by the Court, and the witness answered:

A. Well, I understood, or I was told, Mr. Kester wanted to see me in regard to leaving out some lands that he desired to place scrip on, and I saw him in regard to it.

Q. State the conversation, and all the circumstances under which the conversation occurred.

Mr. FORNEY.—Same objection. Your Honor will let the objection go to all of the testimony along this line, and we will not renew our objection.

The COURT.—Yes; overruled.

To which ruling of the Court the defendants then and there excepted, which exception was allowed by the Court, and the witness answered as follows:

Mr. RUICK.—Q. When did this conversation occur?

A. Just before we made our filing. Mr. Kester stated to me that he had furnished Mr. Goldsmith with plats of that country that were very valuable to him, to enable him to make an intelligent selection, that he had in every way furnished information of this character to him, and that in consideration of

(Testimony of Norman Jackson.)

that fact, he thought I should leave out, not select, I think it was about 500 acres of land so that he could place scrip on it. He said it was scrip that he had held for about a year for an opportunity to place it, and he thought it would be justice to him to give him this opportunity to place it as he had benefited the State to a great extent.

Q. Mr. Jackson, you had a talk with me about this the other day, did you? A. Yes, sir.

Q. Had a couple of talks?

A. Yes, sir. [1261—931]

Q. Did you mention any matter of the number of acres in that conversation?

A. I think not; I don't think I did.

Q. You only stated he wanted you to leave out certain lands? A. Yes, sir.

Q. And thought you ought to do it in consideration of his having furnished plats and so forth?

A. Yes, sir.

Q. Now, you recall the number of acres?

A. Yes, sir; I would not be positive of the number, but I think it was about that.

Q. What refreshed your recollection as to the number of acres?

A. I just thought it over afterwards, but I am not very positive as to the number of acres, but that is just my impression.

Q. Tell the circumstances under which you had this conversation, and where it was.

A. Why, it was in the bank at first, and afterwards that evening Mr. Kester took me riding and

(Testimony of Norman Jackson.)

we discussed this.

Q. What did you tell him about it?

A. I told him I could not possibly do it; I had no authority to do anything of the kind, and finally closed the matter by telling him that I would bring the matter before the State land board, and if they saw fit to favor him in any such way that it was all right, and when I went to Boise I mentioned the matter to the governor, Governor Morrison, and he said we couldn't do anything like that, and the matter dropped right there.

Q. Did he mention any particular lands that he wanted you to leave out? A. I think not.

Mr. RUICK.—You may cross-examine.

Mr. FORNEY.—We ask that all the testimony of this witness be [1262—932] stricken out for the reasons stated in our first objection to it. It is incompetent, irrelevant and immaterial, not connected with the defendants in any way, or any overt act as alleged in the indictment.

The COURT.—I supposed when counsel said he called this witness here out of order, and its relation may appear more clearly later. The Court will deny the motion.

To which ruling of the Court the defendants then and there excepted, which exception was allowed by the Court.

Cross-examination by Mr. TANNAHILL.

As a matter of fact, Mr. Jackson, this scrip of Mr. Kester's had already been filed, had it not?

A. I have no recollection of it.

(Testimony of Norman Jackson.)

Q. You don't remember about that?

A. No, sir.

Q. Don't you remember that Mr. Kester told you that the scrip had already been filed and that he did not want you to give him any trouble over it?

The COURT.—Filed where?

Mr. TANNAHILL.—Filed in the land office, the scrip had been filed sometime before that.

Q. Do you understand the question, Mr. Jackson?

A. Yes, sir; I understand it; I don't remember that feature of it; no, sir.

Q. That might have been the conversation, might it not, Mr. Jackson?

A. It may have been, although if so it has slipped my memory.

Q. Do you not remember that that was one of the reasons that you told Mr. Kester you would take it up with the land board or Governor Morrison?

A. No, sir; I do not. [1263—933]

Q. You do not remember that? A. No, sir.

Q. Mr. Kester did not object to your taking it up with the land board? A. Not at all.

Q. And you do not wish to be understood as saying that Mr. Kester wanted you to do anything wrong in this matter, do you, Mr. Jackson?

A. Well, I—

Mr. RUICK.—That is a question, of course, for the jury to consider.

A. Well, I thought I could not do it, whether it was wrong or not.

Q. And you don't know but what this scrip might

(Testimony of Norman Jackson.)

have already been filed? A. No, sir; I do not.

Q. It might have been, this conversation of Mr. Kester might have been for the purpose of trying to avoid trouble or a conflict on the land?

A. It might have been, I guess; yes, sir.

Redirect Examination by Mr. RUICK.

Q. But he did not say anything to that effect, did he? A. Not that I remember of; no.

Q. You used the word 'Melville' Scott. You mean Melvyn Scott, known as Scotty?

A. Yes, sir.

The COURT.—Was he one of the land selectors for the State?

Mr. RUICK.—Yes, sir, one of the men employed by Goldsmith. [1264—934]

Recross-examination by Mr. TANNAHILL.

Q. Mr. Jackson, I will ask you if there was some scrip land in sections 13, 14, 15 and 23, township 38—5 east, that was left by the State?

A. It might have been; if so it has slipped my mind entirely; I did not pay attention to those things.

Q. Don't you remember that this scrip was laid by F. P. Fitzgerald and left by the State, not selected by the State?

A. I don't remember the circumstance.

Q. That might have been the case?

A. It might have been.

(Witness excused.)'' [1265—935]

**[Stipulation Re Timber and Stone Lands Entry of
William H. Kincaid.]**

Mr. GORDON.—It is stipulated by and between the parties in open court that William H. Kincaid filed in the land office at Lewiston, Idaho, timber and stone lands sworn statement No. 1395, June 10th, 1904, for the south half of the southwest quarter of section 14, and the north half of the northwest quarter of section 23, township 38 north, of range 5 east, Boise meridian; that William Dwyer filed a contest against said entry in said land office September 19th, 1904, and that the decision of the local land office was favorable to the contestant; that the Commissioner of the General Land Office, by letter dated September 5th, 1905, reversed the decision of said local land office, and held the entry intact; no appeal was taken, and the case was closed; patent was issued to William H. Kinkaid for said tract of land September 11th, 1907; that William H. Kinkaid and wife Daisy, by deed duly executed and acknowledged October 16th, 1906, conveyed said described tract of land to W. H. North; that said deed was recorded in the office of the recorder of Nez Perce County, Idaho, in Volume 89, page 476, on October 26th, 1906, at the request of the Lewiston Abstract Company; and that said North subsequently conveyed the title to said tract of land to the Clearwater Timber Company, and the title of record now remains in the Clearwater Timber Company.

Mr. TANNAHILL.—The defendants severally object to the evidence upon the ground and for the

reason that it is irrelevant, incompetent and immaterial, the entry referred to in the foregoing stipulation not being involved in either of the actions.

Mr. GORDON.—It is further stipulated by and between the parties to the several actions, in open court, that Charles G. Rigler filed homestead entry No. 10,477 in the land office at Lewiston, Idaho, February 24th, 1904, for the north half of the northwest quarter of section 25, and the south half of the southwest quarter of section 24, township 38 north, of range 5 east, of Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904; that the case was closed [1266—936] by relinquishment of said entry March 10th, 1906; that Margaret A. Goldsmith filed timber and stone lands sworn statement No. 1847, embracing said land, on March 10th, 1906; that final receipt was issued on said timber and stone lands entry to Margaret A. Goldsmith May 22d, 1906, and that patent was issued to her for said land October 9th, 1907; that Margaret A. Goldsmith, by deed dated September 5th, 1907, conveyed said tract of land to the Clearwater Timber Company, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, September 16th, 1907, at the request of F. J. Davis, and said title now remains of record in the Clearwater Timber Company.

Mr. TANNAHILL.—The same objection as to the preceding entry.

Mr. GORDON.—It is further stipulated by and between the parties in open court that George W. Miller filed homestead entry No. 10,488 in the United

States Land Office at Lewiston, Idaho, February 24th, 1904, for the northeast quarter of section 24, township 38 north, of range 5 east, Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and said contest was closed by relinquishment of entry October 26th, 1904; that Mabel K. Atkinson, a sister of the defendant George H. Kester, filed timber and stone lands sworn statement No. 1544, including said land, in said land office, October 24th, 1904; that receiver's receipt No. 5010 was issued to Mabel K. Atkinson January 16th, 1905; that patent has not issued; that Mabel K. Atkinson and husband, Joseph F. Atkinson, by deed dated May 6th, 1906, conveyed said tract of land to William F. Kettenbach and George H. Kester, and that said deed is recorded in the office of the recorder of Nez Perce County May 15th, 1906; that William F. Kettenbach and wife, and George H. Kester, and wife Edna P. Kester, conveyed said tract of land to the Idaho Trust Company, of Lewiston, by deed dated December 31st, 1909, and said deed is recorded in the office of the recorder of Nez Perce County January 27th, 1910 and that the title to said land now stands of record in the Idaho Trust Company.

Mr. TANNAHILL.—The same objection. [1267—937]

Mr. GORDON.—It is further stipulated by and between the parties in open court that Charles F. Shumaker filed homestead entry No. 10,481 in the United States Land Office at Lewiston, Idaho, October 29th, 1907, for the northeast quarter of section 29, township 38 north, of range 6 east, Boise

meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and said contest case was closed by relinquishment of entry September 6th, 1905; that Joseph F. Atkinson, brother in law to the defendant George H. Kester, filed timber and stone lands sworn statement No. 1,698 on said last described tract of land in the land office at Lewiston, Idaho, September 6th, 1905; that final receipt on said timber and stone entry, No. 5,231, was issued to said Joseph F. Atkinson November 22d, 1905, and that patent was issued on said tract to said Atkinson September 11th, 1907; that Joseph F. Atkinson and wife Mabel K., by deed dated May 8th, 1906, conveyed said last above described tract of land to W. F. Kettenbach and George H. Kester, in consideration of \$2400.00, and said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, May 15th, 1906; that the said William F. Kettenbach and wife Mary J., and George H. Kester and wife Edna P., by deed dated December 31st, 1909, in consideration of \$2.00, conveyed said last above described tract of land to the Idaho Trust Company, of Lewiston, Idaho, said deed being recorded in the office of the Recorder of Nez Perce County January 27th, 1910, and said title is now in the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated in open court by and between the parties that Charles B. Thomberg filed homestead entry No. 10,496 in the United States land office at Lewiston, Idaho, Febru-

ary 24th, 1904, for the northwest quarter of section 29, township 38 north, of range 6 east, Boise meridian; that William Dwyer filed a contest against said [1268—938] entry May 25th, 1904, and said contest case was closed by Letter “H” of the Commissioner of the General Land Office, dated September 28th, 1905.

That Charles S. Myers filed timber and stone lands sworn statement No. 1,735 in the United States land office at Lewiston, Idaho, October 30th, 1905, for the land last described; that receiver’s receipt No. 5,268 was issued to said Charles S. Myers January 22d, 1906, and that patent was issued to said Charles S. Myers for the land last described September 11th, 1907; that Charles S. Myers and his wife Jannie, by deed dated March 21st, 1906, conveyed said tract of land to William F. Kettenbach and George H. Kester, in consideration of \$1,000.00, and that said deed is recorded in the office of the Recorder of Nez Perce County, Idaho, March 26th, 1906; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., conveyed said tract of land to the Idaho Trust Company, of Lewiston, Idaho, by deed dated December 31st, 1909, in consideration of \$2.00, said deed being recorded in the office of the Recorder of Nez Perce County, Idaho, January 27th, 1910, in volume 100, at page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The defendants severally object to the evidence, upon the ground that the same is irrelevant, incompetent and immaterial, that said

entry is not involved in either of the actions.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Charles G. Vogelmann filed homestead entry No. 10,501 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the southeast quarter of section 7, township 39 north, of range 5 east, of Boise meridian; that William Dwyer filed a contest against said entry in the United States land office at Lewiston, Idaho, May 25th, 1904, and said contest case was closed by relinquishment of entry November 29th, 1905; that Frank L. Moore filed timber and stone [1269—939] lands sworn statement No. 1,757 on said land, in said land office, November 29, 1905; that receiver's receipt No. 5,308 was issued to said Frank L. Moore February 26th, 1906, and that patent for said land issued to said Frank L. Moore September 11, 1907, and that the title to said land now stands of record in the name of Frank L. Moore.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is stipulated by and between the parties in open court that Albert O. Wasson filed homestead entry No. 5,698 in the United States land office at Lewiston, Idaho, June 5, 1899, for the west half of the southeast quarter, and the east half of the southwest quarter of section 34, township 40 north, of range 1 east, Boise meridian; that William Dwyer filed a contest against said entry March 8, 1902, and that said contest case was dismissed for want of prosecution June 17th, 1902, and that patent to said land was issued to said Albert O. Wasson December

13th, 1905, and that title to said land now stands of record in the name of Albert O. Wasson.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that William B. Walker filed homestead entry No. 10,579 in the United States land office at Lewiston, Idaho, April 6th, 1904, for the northwest quarter of section 20, township 38 north, of range 5 east, Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and said contest case was closed by relinquishment of entry August 29th, 1904; that Hiram Lewis filed timber and stone lands sworn statement No. 1,567 in said land office December 13th, 1904, on the land last described; that receiver's receipt No. 4,943 was issued to Hiram Lewis November 18th, 1904, for said land; that no patent has yet issued; that Hiram F. Lewis, by deed dated May 10th, 1906, conveyed said tract of land to George H. Kester and William F. Kettenbach, for a consideration of \$2,000.00, and that said deed is recorded in the [1270—940] office of the County Recorder of Nez Perce County, Idaho, May 15th, 1906, in volume 81, at page 626; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., conveyed said tract of land to Idaho Trust Company, of Lewiston, Idaho, by deed dated December 31st, 1909, for a consideration of \$2.00, and that said deed is recorded in the office of the recorder of Nez Perce County, Idaho, January 27th, 1910, in vol. 100, at page 488; and that the title to said tract of land

now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The defendants severally object to the evidence, upon the ground that the same is irrelevant, incompetent and immaterial, that said entry is not involved in either of the actions.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Walter Williams filed homestead entry No. 10,484, for the north half of the northeast quarter and the north half of the northwest quarter of section 15, in township 38 north, of range 6 east, Boise meridian, in the United States land office at Lewiston, Idaho, February 24th, 1904; that William Dwyer filed a contest against said entry May 25th, 1904, and that said contest case was closed by relinquishment of entry August 23d, 1904; that Charles Carey filed timber and stone lands sworn statement No. 1,492 in said land office August 23d, 1904, for said last described tract of land; that receiver's receipt for said last described tract of land was issued to said Charles Carey November 18th, 1904, being receiver's receipt No. 4,943; that patent has not issued; that Charles Carey, single, by deed dated April 15th, 1905, conveyed to W. F. Kettenbach and George H. Kester the said tract of land, for a consideration of \$950.00, and that said deed is recorded in the office of the recorder of Nez Perce County, Idaho, February 3d, 1906, in vol. 81, at page 466; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated December 31, 1909, conveyed said tract of land to the Idaho Trust Company, of Lewiston,

Idaho, for a consideration of \$2.00, and that said deed is recorded [1271—941] in the office of the recorder of Nez Perce County, Idaho, January 27th, 1910, in vol. 100, at page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Albert J. Flood filed homestead entry No. 10,485 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the south half of the south half of section 15, township 38 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and that said contest case was closed by relinquishment of entry July 11th, 1904; that Albert G. Kester, a brother of the defendant George H. Kester, filed timber and stone lands sworn statement No. 1,451 in said land office, for said land, July 11th, 1904; that receiver's receipt No. 4,879 was issued to said Albert G. Kester for said land September 23d, 1904; that patent has not issued; that Albert G. Kester, single, by deed dated January 4th, 1909, conveyed said tract of land to W. F. Kettenbach and George H. Kester, for a consideration of \$850.00, and that said deed was recorded in the office of the recorder of Nez Perce County, Idaho, May 1st, 1909, at the request of William Dwyer, in book 101, at page 106; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated December 31st, 1909, conveyed said

tract of land to the Idaho Trust Company, of Lewiston, Idaho, for a consideration of \$2.00, and that said deed was recorded in the office of the recorder of Nez Perce County, Idaho, at the request of the Nez Perce Abstract Company, January 27th, 1910, in vol. 100, at page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation. [1272—942]

Mr. GORDON.—It is further stipulated by and between the parties in open court that John P. Harlan filed homestead entry No. 10,538 in the United States land office at Lewiston, Idaho, March 9th, 1904, for the west half of the southwest quarter and the west half of the northwest quarter of section 28, township 40 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry October 4th, 1904; that said contest case was closed by decision of secretary of the Interior, by Letter "H," dated May 6th, 1907, that said contest was dismissed and said homestead entry held intact; that John P. Harlan, by deed recorded March 19th, 1910, at the request of the North Idaho Title Company, in Deed Record 97, at page 602, conveyed said tract of land to the Clearwater Timber Company; that patent to said land was issued to said John P. Harlan June 30th, 1909, and that the title to said tract of land now stands of record in the name of the Clearwater Timber Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that John W. Huber filed homestead entry No. 8319 in the United States land office at Lewiston, Idaho, April 17th, 1901, for the west half of the southeast quarter of section 34, township 41 north, range 1 west, Boise meridian; that William Dwyer filed a contest against said entry December 3d, 1901, and said contest case was closed by relinquishment of entry March 9th, 1902; that George W. Ferguson filed timber and stone lands sworn statement No. 744 in said land office, for said land, November 21st, 1902; that receiver's receipt No. 4,234 for said land was issued to said George W. Ferguson February 23d, 1903; that patent has not issued, and that the title to said tract of land now stands of record in the name of George W. Ferguson.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation. [1273—943]

Mr. GORDON.—It is further stipulated by and between the parties in open court that William R. Lawrence filed homestead entry No. 10,486 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the north half of the south half of section 15, township 38 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and that said contest case was closed by relinquishment of entry July 11th, 1904; that Benjamin F. Rowland filed timber and stone lands sworn statement No. 1450 on said land in said land office, July 11th, 1904; that receiver's receipt No. 4878 was issued to Benjamin F.

Rowland September 23d, 1904; that patent has not issued; that Benjamin F. Rowland and wife Hattie, by deed dated April 9th, 1906, conveyed said tract of land to the defendant Kittie E. Dwyer, for a consideration of \$1,000.00, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of William Dwyer, in vol. 85, at page 501; that Kittie E. Dwyer and husband William, by deed dated December 31st, 1908, conveyed said tract of land to the Idaho Trust Company, of Lewiston, Idaho, for a consideration of \$1,000.00, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of the Nez Perce Abstract Company, January 4th, 1909, in vol. 99, at page 464, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Fred. H. McConnell filed homestead entry No. 10,464 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the northeast quarter of section 30, township 38 north, range 6 east, Boise meridian; that Malvern C. Scott filed a contest against said entry May 24th, 1904, and that said contest was closed by relinquishment of entry August 5th, 1904; that Malvern C. Scott filed timber and stone lands sworn statement No. 1466 in said land office on [1274—944] August 5th, 1904, for said tract of land; that receiver's receipt No. 4919 was issued to Malvern C.

Scott for said tract of land October 21st, 1904; that patent has not issued; that Malvern C. Scott, single, by deed dated February 5th, 1906, for a consideration of \$850.00, conveyed said tract of land to William F. Kettenbach and George H. Kester, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, on February 9th, 1906, at the request of the Lewiston National Bank, in vol. 85, at page 307; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated December 31st, 1909, for a consideration of \$2.00, conveyed said tract of land to the Idaho Trust Company, of Lewiston, Idaho, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of the Nez Perce Abstract Company, on January 27th, 1910, in vol. 100, at page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Frank A. McConnell filed homestead entry No. 10,461 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the southwest quarter of section 20, township 38 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry September 12th, 1904, and that said contest case was closed by relinquishment of entry December 12th, 1904; that Margaret A. Miller filed timber and stone lands sworn statement No. 1566 in said land office on

said land December 12th, 1904; that receiver's receipt No. 5045 was issued to Margaret A. Miller for said land March 7th, 1905; that patent has not issued; that Margaret A. Miller, widow, by deed dated January 24th, 1906, for a consideration of \$850.00, conveyed said tract of land to Kittie E. Dwyer, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of William Dwyer, January 27th, 1906, in Deed Record 35, at page 270, and [1275—945] that the title to said tract of land now stands of record in the name of Kittie E. Dwyer.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Albert Anderson filed homestead entry No. 10,493 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the southeast quarter of section 30, township 38 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and that said contest case was closed by relinquishment of entry December 12th, 1904; that Mary E. Sherman filed timber and stone lands sworn statement No. 1564 in said land office on said land December 12th, 1904; that receiver's receipt No. 5042 was issued to Mary E. Sherman for said land March 6th, 1905; that patent has not issued; that Mary E. Sherman and husband Charles, by deed dated March 7th, 1905, for a consideration of \$850.00, conveyed said tract of land to Kittie E. Dwyer, and that said deed was recorded in the office of the Re-

corder of Nez Perce County January 18th, 1906, at the request of William Dwyer, in book 81, at page 435; that Kittie E. Dwyer and husband William, by deed dated December 31st, 1908, for a consideration of \$1.00, conveyed said tract of land to the Idaho Trust Company, of Lewiston, Idaho, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of the Lewiston Abstract Company, January 4th, 1909, in vol. 99, page 464, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that George G. James filed homestead entry No. 10,469 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the north half of the southeast quarter of section 8, and the north [1276—946] half of the southwest quarter of section 9, township 38 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry, and that said contest was closed by relinquishment of entry; said relinquishment being under date of September 21st, 1904; that George C. Davenport filed timber and stone lands sworn statement No. 1526 on said land in said land office September 21st, 1904; that cash entry No. 4984 for said land was issued to said George C. Davenport December 14th, 1904; that patent has not issued; that receiver's receipt to George C. Davenport, dated December 14th, 1904, was recorded in the

office of the Recorder of Nez Perce County, Idaho, at the request of the Lewiston National Bank, May 15th, 1906, in book 3, page 330; description of said receiver's receipt being the north half of the southeast quarter of section 8, and the north half of the southwest quarter of section 9, township 38 north, range 6 east, Boise meridian; that George C. Davenport and wife Mary, by deed dated May 10th, 1906, for a consideration of \$1500.00, conveyed said tract of land to William K. Kettenbach and George H. Kester, and that said deed was recorded in the office of the County Recorder of Nez Perce County, Idaho, at the request of the Lewiston National Bank, May 15th, 1906, in book 84, at page 595; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated December 31st, 1909, for a consideration of \$2.00, conveyed said tract of land to the Idaho Trust Company, of Lewiston, Idaho, and that said deed was recorded in the office of the County Recorder of Nez Perce County, at the request of the Nez Perce Abstract Company, January 27th, 1910, in book 10, page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation. [1277—947]

Mr. GORDON.—It is further stipulated by and between the parties in open court that John McHardie filed homestead entry No. 10,638 in the United States land office at Lewiston, Idaho, April 18th, 1904, for the southeast quarter of section 19, township 38 north, range 6 east, Boise meridian;

that William Dwyer filed a contest against said entry May 24th, 1904, and that said contest case was closed by relinquishment of entry September 8th, 1904; that Edwin Bliss filed timber and stone lands sworn statement No. 1515 on said land in said land office September 8th, 1904; that receiver's receipt No. 4950 was issued to Edwin Bliss for said land; that patent has not issued; that Edwin Bliss and wife Catherine, by deed dated May 12th, 1906, for a consideration of \$1,250.00, conveyed said land to William F. Kettenbach and George H. Kester, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of the Lewiston National Bank, May 15th, 1906, in vol. 84, at page 596; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated December 31st, 1909, for a consideration of \$2.00, conveyed said tract of land to the Idaho Trust Company, and that said deed is recorded in the office of the County Recorder of Nez Perce County, Idaho, at the request of the Nez Perce Abstract Company, January 27th, 1910, in vol. 100, at page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Carl Rogers filed homestead entry No. 10,475 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the northeast quarter of section 12, township 38 north, range 5 east, Boise meridian; that said entry

was relinquished March 20th, 1906; that Carl Rogers filed timber and stone lands sworn statement No. 1858 for said land in said land office March 20th, 1906; that William Dwyer filed a contest against said last [1278—948] mentioned filing May 4th, 1906, and that said contest case was closed by relinquishment of filing March 14th, 1908; that Northern Pacific List No. 81, embracing said land, was filed March 14th, 1908, the nonmineral affidavit being executed by William Dwyer; that L. Grace Rogers filed homestead entry No. 10,474 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the southwest quarter of the southwest quarter, the north half of the southwest quarter, and the northwest quarter of the southeast quarter of section 12, T. 38 north, range 5 east, Boise meridian; that said homestead entry was relinquished March 20th, 1906; that Lena Grace Rogers Ford filed timber and stone lands sworn statement No. 1857, for the land last described, in said land office, March 20th, 1906; that William Dwyer filed a contest against said last mentioned filing June 1st, 1907; that the Register and Receiver of the Lewiston land office held in favor of contestant; that the papers in said contest case were transmitted to the general land office, but that there is no further action noted of record; that Northern Pacific Railroad Company filed List 82 in said land office March 14th, 1908, the nonmineral affidavit being executed by William Dwyer; that T. Waldo Murphy and wife Laura M., by deed dated April 6th, 1908, for a consideration of \$2,640.00, conveyed to W. F. Kettenbach a one-half

interest in the northeast quarter, the southwest quarter of the southwest quarter, the north half of the southwest quarter, and the northwest quarter of the southeast quarter of section 12, township 38 north, range 5 east, Boise meridian, and that said deed was recorded in the office of the recorder of Nez Perce County, Idaho, at the request of the Lewiston National Bank, April 23d, 1108, in deed record 95, at page 242; that T. Waldo Murphy and wife Laura M., by deed dated April 6th, 1908, for a consideration of \$2,640.00, conveyed to R. C. Beach a one-fourth interest in the lands last described, and that said deed was recorded at the request of the Lewiston National Bank in the office of the Recorder of Nez Perce County, Idaho, April 23d, 1908, in vol. 95, at page 241; that T. Waldo Murphy and wife Laura M., by deed dated April [1279—949] 6th, 1909, for a consideration of \$2,640.00, conveyed to George H. Kester a one-fourth interest in the lands last described, and that said deed was recorded at the request of the William Dwyer in the office of the County Recorder of Nez Perce County, Idaho, April 8th, 1909, in vol. 100, page 86.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Frank Lillgren filed homestead entry No. 7022 in the United States land office at Lewiston, Idaho, June 23d, 1899, for the southeast quarter of section 34, township 40 north, range 2 east, Boise meridian; that William Dwyer filed a contest against said entry

December 1st, 1900; that said entry was relinquished November 22, 1901; that Kittie E. Dwyer filed timber and stone lands sworn statement for said land, and cash entry No. 3587 was issued to Kittie E. Dwyer February 5th, 1902; that patent was issued to said Kittie E. Dwyer for said land October 12th, 1903; that said patent was recorded in the office of the County Recorder of Nez Perce County at the request of the Shoshone Abstract Company November 21st, 1903, in B. 83½, at page 356; that Kittie E. Dwyer and husband William, by deed dated August 25th, 1902, for a consideration of \$3,500.00, conveyed said land last described to the Wisconsin Log and Lumber Company, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of the Wisconsin Log and Lumber Company, September 17th, 1902, in book 83, at page 464; that the Wisconsin Log and Lumber Company and the Northland Pine Company, by deed dated April 10th, 1903, conveyed said land last described, with other lands, to the Potlatch Lumber Company, for a consideration of \$27,744.70, and that said deed was recorded at the request of the Shoshone Abstract Company in the office of the Recorder of Nez Perce County, Idaho, May 2d, 1903, in B. 83½, at page 142, and that the title to said tract of land now stands of record in the name of the Potlatch Lumber Company. [1280—950]

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Susan Com-

stock filed homestead entry No. 10,495 in the United States land office at Lewiston, Idaho, May 25th, 1904, for the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian; that said entry was relinquished October 26th, 1904; that William Dwyer filed a contest against said entry May 25th, 1904, and that said contest case was closed by relinquishment of entry; that Edward M. Lewis filed timber and stone lands sworn statement No. 1543 in said land office for the north half of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian, October 26th, 1904; that F. C. No. 5016 was issued to Edward M. Lewis for the land last described and for the southwest quarter of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian; that no patent has issued; that William E. Helkenberg filed timber and stone lands sworn statement No. 1542 in said land office October 26th, 1904, for the southeast quarter of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian; that F. C. No. 5015 was issued January 20th, 1905, to William E. Helkenberg for the land last described, and that patent was issued May 29th, 1907, to William E. Helkenberg, for the land last described; that receiver's receipt to Edward M. Lewis for the north half of the northeast quarter, and the southwest quarter of the northeast quarter of section 20, township 39 north, range 5 east, Boise meridian, dated January 20th, 1905, was recorded in the office of the County Recorder of Nez Perce County, Idaho, September 21st, 1909, at the request of William Dwyer,

for W. F. Kettenbach, in book 6, page 63; that Edward M. Lewis, by deed dated March 2, 1906, for a consideration of \$850.00, conveyed the tract of land last described to H. F. Lewis, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, March 2, 1906, at the request of H. F. Lewis, in book 85, page 376; that Hiram F. Lewis, by deed dated [1281—951] May 10th, 1906, for a consideration of \$2,000.00, conveyed the tract of land last described to George H. Kester and William F. Dwyer, and that said deed was recorded in the office of the Recorder for Nez Perce County May 15th, 1906, at the request of the Lewiston National Bank, in book 81, page 626; that receiver's receipt to William E. Helkenberg, dated January 20th, 1905, for the northwest quarter of the southwest quarter of section 28, and the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian, was recorded November 11, 1905, in book 3, page 283, in the office of the Recorder of Nez Perce County, Idaho, at the request of; that William E. Helkenberg and wife Lillian, by deed dated October 18, 1905, for a consideration of \$900.00, conveyed the northwest quarter of the southeast quarter of section 28, the northeast quarter of the southeast quarter and the southeast quarter of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian, to George H. Kester and William F. Kettenbach, and that said deed is recorded in the office of the Recorder of Nez Perce County, Idaho, November 11th,

1905, at the request of, in book 81, page 308; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated July 6th, 1907, for a consideration of \$1.00, conveyed to the Idaho Trust Company, a corporation, the north half of the northeast quarter, and the southwest quarter of the northeast quarter, of section 29, the northwest quarter of the southwest quarter of section 28, the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, July 10th, 1907, in book 87, page 537.

[Stipulation Re Homestead Entry of John Maier.]

Mr. TANNAHILL.—The same objection as to the first entry and stipulation. [1282—952]

Mr. GORDON.—It is further stipulated by and between the parties in open court that John Maier filed homestead entry No. 5434 in the United States land office at Lewiston, Idaho, October 29th, 1897, for the southwest quarter of the southwest quarter, the east half of the southwest quarter, and the southeast quarter of the northwest quarter of section 25, township 41 north, range 2 west, Boise meridian; that William Dwyer filed a contest against said entry August 7th, 1901, and said contest case was closed by relinquishment of entry September 7th, 1901; that Peter Collins filed Lieu Selection No. 5632 upon said tract of land March 19th, 1902, and that patent for said tract of land was

issued to Peter Collins March 4th, 1904. [1283—953]

[Offer of Notice of *Lis Pendens* Dated October 16, 1907, in U. S. A. *vs.* Kettenbach et al.]

Mr. GORDON.—We offer in evidence the notice of *lis pendens* in the case of United States of America, Complainant, *vs.* William F. Kettenbach and Others, Defendants, filed for record in the office of the recorder of Nez Perce County, Idaho, October 16, 1907, at nine o'clock A. M., and recorded in book 1 of *Lis Pendens*, at page 211, which reads as follows:

“35,329 LIS PENDENS.

In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE W. ROBBETT, and FRANK W.
KETTENBACH,

Respondents.

NOTICE OF LIS PENDENS.

Notice is hereby given that a suit has been commenced in the above-named court by the above-named complainant against the above-named respondents, which suit is now pending; that the object of said suit is to vacate, annul and set aside certain United States patents heretofore issued by the United States of America, at the instance and by the procurements of the defendants, William F. Kettenbach, George

H. Kester, William Dwyer, and Clarence W. Robnett, to the following named persons and for the lands described after each name, respectively:

Carrie D. Maris. SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 13, Tp. 36 N., R. 5 E., B. M.

William B. Benton. S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 15, Tp. 39 N., R. 3 E., B. M.

Joel H. Benton. S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, Tp. 39 N., R. 3 E., B. M. [1284—954]

Henderson F. Dizney. N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ Sec. 14, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 11, Tp. 40 N., R. 3 E., B. M.

Harry S. Palmer. E. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$ Sec. 33, Tp. 40 N., R. 4 E., B. M.

George W. Harrington. W. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 10, Tp. 36 N., R. 5 E., B. M.

Robert N. Wright. Lot 1, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 1, Tp. 33 N., R. 5 E., B. M.

Maud N. Wright. Lot 1, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 3, Tp. 33 N., R. 5 E., B. M.

Van W. Robertson. SW. $\frac{1}{4}$, Sec. 10, Tp. 39 N., R. 3 E., B. M.

John W. Killinger. N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$ Sec. 13, Tp. 39 N., R. 2 E., B. M.

John E. Nelson. NE. $\frac{1}{4}$, Sec. 24, Tp. 39 N., R. 2 E., B. M.

Soren Hansen. SE. $\frac{1}{4}$ Sec. 10, Tp. 39 N., R. 3 E., B. M.

John H. Little. Lot 1, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 25, Tp. 39 N., R. 3 E., B. M.

Ellsworth M. Harrington. Lot 1, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$,
N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 24, Tp. 39 N., R. 3 E., B. M.

Wren Pierce. SE. $\frac{1}{4}$ Sec. 22, Tp. 39 N., R. 3 E.,
B. M.

Benjamin F. Bashor. Lot 4, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$,
SW. $\frac{1}{4}$, Sec. 24, Tp. 39 N., R. 3 E., B. M.

Jas. C. Evans. S. $\frac{1}{2}$ NW. $\frac{1}{4}$ W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 25,
Tp. 39 N., R. 3 E., B. M.

Pearl Washburn. E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec.
27, Tp. 40 N., R. 4 E., B. M.

Lon E. Bishop. W. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 23,
Tp. 39 N., R. 3 E., B. M.

Joseph B. Clute. S. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 26,
Tp. 39 N., R. 3 E., B. M.

Frederick W. Newman. S. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$,
Sec. 23, Tp. 39 N., R. 3 E., B. M.

Francis M. Long. N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec.
13, Tp. 39 N., R. 3 E., B. M.

John H. Long. Lot 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$,
Sec. 24, Tp. 39 N., R. 3 E., B. M. [1285—955]

Benjamin F. Long. S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec.
18, Tp. 39 N., R. 3 E., B. M.

Charles Dent. N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 14,
Tp. 39 N., R. 3 E., B. M.

Charles Smith. NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 14, SE. $\frac{1}{4}$
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, Tp. 39 N., R. 3 E.,
B. M.

George Morrison. NE. $\frac{1}{4}$, Sec. 22, Tp. 39 N., R. 3
E., B. M.

Edward M. Hyde. NW. $\frac{1}{4}$, Sec. 22, Tp. 39 N., R. 3
E., B. M.

Bertsel H. Ferris. Lot 3, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW.
 $\frac{1}{4}$, Sec. 24, Tp. 39 N., R. 3 E., B. M.

- George Ray Robinson, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$,
Sec. 26, Tp. 39 N., R. 3 E., B. M.
- Drury M. Gammon. SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 26, SW. $\frac{1}{4}$
SW. $\frac{1}{4}$, Sec. 25, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 25, Tp. 40 N.,
R. 3 E., B. M.
- Chas. W. Taylor. Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec.
30, Tp. 38 N., R. 6 E., B. M.
- Jackson O'Keefe. W. $\frac{1}{2}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec.
23, Tp. 38 N., R. 5 E., B. M.
- Edgar J. Taylor. Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 18,
Tp. 38 N., R. 6 E., B. M.
- Joseph H. Prentice. Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec.
18, Tp. 38 N., R. 6 E., B. M.
- George H. Kester. N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 30, SW. $\frac{1}{4}$
SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 19, Tp. 39 N., R. 5 E.,
B. M.
- Guy L. Wilson. Lots 3, 4, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$
SE. $\frac{1}{4}$, Sec. 19, Tp. 39 N., R. 5 E., B. M.
- Frances A. Justice. Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 19,
Tp. 38 N., R. 6 E., B. M.
- Fred A. Justice. E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 20,
Tp. 38 N., R. 6 E., B. M.
- Edna P. Kester. N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec.
14, Tp. 38 N., R. 5 E., B. M.
- Elizabeth Kettenbach. W. $\frac{1}{2}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$,
Sec. 13, Tp. 38 N., R. 5 E., B. M.
- William J. White. S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec.
14, Tp. 38 N., R. 5 E., B. M. [1286—956]
- Elizabeth White. S. $\frac{1}{2}$ NW. $\frac{1}{4}$ S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec.
23, Tp. 38 N., R. 5 E., B. M.
- Mamie P. White. N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec.
14, Tp. 38 N., R. 5 E., B. M.
- Walter E. Daggett. Lots 2, 3, 7, 8 and 9, Sec. 5, Tp.

40 N., R. 5 E., B. M.

Martha E. Hallett. Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 19,
Tp. 38 N., R. 6 E., B. M.

Daniel W. Greenburg. SW. $\frac{1}{4}$, Sec. 17, Tp. 39 N.,
R. 5 E., B. M.

David S. Bingham. SE. $\frac{1}{4}$, Sec. 17, Tp. 39 N., R.
5 E., B. M.

William McMillan. SE. $\frac{1}{4}$, Sec. 21, Tp. 39 N., R.
5 E., B. M.

Hattie Rowland. SE. $\frac{1}{4}$, NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE.
 $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 15, Tp. 38 N., R. 5 E., B. M.

Edgar H. Dammarell. NE. $\frac{1}{4}$, Sec. 19, Tp. 38 N.,
R. 6 E., B. M.

William E. Helkenbery. NW. $\frac{1}{4}$, SW. $\frac{1}{4}$, Sec. 28,
NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 29, Tp. 39 N.,
R. 5 E., B. M.

William Havernick. SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 23, NE. $\frac{1}{4}$
NE. $\frac{1}{4}$, Sec. 26, Tp. 37 N., R. 2 E., B. M.

Geary Van Ardsdalen. NE. $\frac{1}{4}$, Sec. 25, Tp. 37 N.,
R. 5 E., B. M.

All of said lands being in the Lewiston, Idaho, land
district, and in Nez Perce County, in the State and
district of Idaho.

CHARLES J. BONAPARTE,

Attorney General of the United States,

N. M. RUICK,

United States Attorney, District of Idaho,

MILES S. JOHNSON,

Assistant United States Attorney, District
of Idaho,

Solicitors for Complainant.

Dated October 14, 1907.

Filed for record October 16th, A. D. 1907, at 9 o'clock A. M., request of U. S. Attorney.

W. L. GIFFORD,

Recorder.

By R. L. Thompson,

Deputy. [1287—957]

Fees, \$2.55."

[Offer of Notice of Lis Pendens Dated September 7, 1907, in U. S. A. vs. Kettenbach et al.]

Mr. GORDON.—We offer in evidence the notice of *Lis Pendens* in the equity cause, United States of America vs. William F. Kettenbach and others, recorded September 7, 1909, at nine o'clock A. M., in the records of the recorder of Nez Perce County, State of Idaho, in book of *Lis Pendens* No. 1, at page 296, and which reads as follows:

“ #47,509 LIS PENDENS.

In the Circuit Court of the United States for the District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK, OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER,

ELIZABEH WHITE, EDNA P. KESTER,
ELIZABETH KETTENBACH, MARTHA
E. HALLETT, KITTIE E. DWYER, POT-
LATCH LUMBER COMPANY, ROBERT
O. WALDMAN,

Defendants.

NOTICE OF LIS PENDENS.

Notice is hereby given, that a suit in Equity has been commenced in the above-named court, by the above-named complainant against the above-named defendants, which suit is now pending; that the object of said suit is to vacate, annul, set aside and cancel certain United States patents, heretofore issued by the United States [1288—958] of America, at the instance and by the procurement of the defendants, William F. Kettenbach, George H. Kester, Clarence W. Robnett and William Dwyer, to the following named persons, and for the lands described and set out, after and opposite the name of each person respectively;

William B. Benton: The south half of the northwest quarter, and the north half of the southwest quarter, of section fifteen, in township thirty-nine, north of range three east, Boise meridian.

Joel H. Benton: The south half of the southwest quarter, and the south half of the southeast quarter of section fifteen in township thirty-nine north of range three east, Boise meridian.

George W. Harrington: The west half of the northwest quarter, the northeast quarter of the northwest quarter, and the northwest quarter of the northeast quarter, of section ten, in township

thirty-six north of range five east, Boise meridian.

Van V. Robertson: The southwest quarter of section ten, in Township thirty-nine north of range three east, Boise meridian.

John W. Killinger: The north half of the southwest quarter, and the north half of the southeast quarter of section thirteen, in township thirty-nine north of range two east, Boise meridian.

John E. Nelson: The northeast quarter of section twenty-four in township thirty-nine north of range two east, Boise meridian.

Soren Hansen: The southeast quarter of section ten in township thirty-nine north of range three east, Boise meridian.

James C. Evans: The south half of the northwest quarter and the west half of the southwest quarter, of section twenty-five, in township thirty-nine north of range three east, Boise meridian.

Pearl Washburn: The east half of the southeast quarter and the southeast quarter of the northeast quarter of section twenty-seven in township forty north of range four east, Boise meridian.

Lon E. Bishop: The west half of the southeast quarter, and the [1289—959] south half of the southwest quarter, of section twenty-three in township thirty-nine north of range three east, Boise meridian.

Frederick W. Newman: The south half of the northeast quarter, and the east half of the southeast quarter of section twenty-three in township

thirty-nine north of range three east, Boise meridian.

Charles Dent: The north half of the northeast quarter, and the north half of the northwest quarter of section fourteen, in township thirty-nine north of range three east, Boise meridian.

Charles Smith: The northwest quarter of the southwest quarter of section fourteen, the southeast quarter of the northeast quarter, and the north half of the southeast quarter of section fifteen, in township thirty-nine north of range three east, Boise meridian.

George Morrison: Northeast quarter of section twenty-two, in township thirty-nine north of range three east, Boise meridian.

Edward M. Hyde: The northwest quarter of section twenty-two in township thirty-nine north of range three east, Boise meridian.

Drury M. Gammon: The southeast quarter of the southeast quarter of section twenty-six, and the southwest quarter of the southwest quarter of section twenty-five and the north half of the northeast quarter of section thirty-five all in township forty north of range three east of Boise meridian.

Guy L. Wilson: Lots three and four, the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter, of section nineteen in township thirty-nine north of range five east, Boise meridian.

Frances A. Justice: Lots three and four, and the east half of the southwest quarter of section nineteen

in township thirty-eight north of range six east, Boise meridian.

Edna P. Kester: The north half of the northeast quarter and the north half of the northwest quarter of section fourteen in township thirty-eight north of range five east, Boise meridian.
[1290—960]

Elizabeth Kettenbach: The west half of the northeast quarter and the west half of the southeast quarter of section thirteen in township thirty-eight north of range five east, Boise meridian.

William J. White: The south half of the northwest quarter, and the south half of the northeast quarter of section fourteen in township thirty-eight north of range five east, Boise meridian.

Elizabeth White: The south half of the northwest quarter, and the south half of the northeast quarter of section twenty-three, in township thirty-eight north of range five east, Boise meridian.

Mamie P. White: The north half of the southwest quarter, and the north half of the southeast quarter of section fourteen, in township thirty-eight north of range five east, Boise meridian.

Martha E. Hallett: Lots one and two and the east half of the northwest quarter of section nineteen in township thirty-eight north of range six east, Boise meridian.

Daniel W. Greenburg: Southwest quarter of section seventeen, in township thirty-nine north of range five east, Boise meridian.

David S. Bingham: The southeast quarter of section seventeen in township thirty-nine north of range

five east, Boise meridian.

William McMillan: The southeast quarter of section twenty-one in township thirty-nine north of range five east, Boise meridian.

Hattie Rowland: The southeast quarter of the northwest quarter, the south half of the northeast quarter, and the northeast quarter of the southeast quarter of section fifteen in township thirty-eight north of range five east, Boise meridian.

William E. Helkenberg: The northwest quarter of the southwest quarter of section twenty-eight, and the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section twenty-nine in township thirty-nine north of range five east, Boise meridian. [1291—961]

William Haevernick: The southeast quarter of the southeast quarter of section twenty-three, and the northeast quarter of the northeast quarter of section twenty-six in township thirty-seven north of range two east, Boise meridian.

Alma Haevernick: The southwest quarter of the northeast quarter of section twenty-six in township thirty-seven north of range two east, Boise meridian.

Geary Van Artsdalen: The northeast quarter of section twenty-five in township thirty-seven, north of range five east, Boise meridian.

Robert O. Waldman: Lots two, three, six and seven of section thirty in township thirty-eight north of range two east, Boise meridian.

All of said lands being in the Lewiston Idaho land

district and in Nez Perce County, in the State and District of Idaho.

GEORGE W. WICKERSHAM,
Attorney General of the United States, Solicitor for
Complainant.

Dated September —, 1909.

Filed for record Sept. 7th, A. D. 1909, at 9 o'clock
A. M. Request of P. Gordon.

W. L. GIFFORD,
Recorder.

By C. L. Swormstede,
Deputy.

Fees \$4.00." [1292—962]

[Offer of Notice of *Lis Pendens* Dated September
7, 1909, in U. S. A. vs. Kettenbach et al.]

Mr. GORDON.—We also offer in evidence the notice of *Lis Pendens* in equity cause, United States of America, Complainant, vs. William F. Kettenbach and others, Defendants, recorded in the office of the recorder of Nez Perce County, Idaho, September 7th, 1909, at nine o'clock A. M., in *Lis Pendens* book No. 1, at page 298, and which reads as follows:

“ #47,510. LIS PENDENS.

*In the Circuit Court of the United States, for the Dis-
trict of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER,
Defendants.

NOTICE OF LIS PENDENS.

Notice is hereby given that a suit in Equity has been commenced in the above-named court by the above-named complainant against the above-named defendants which suit is now pending; that the object of said suit is to vacate, annul, set aside and cancel certain United States Patents heretofore issued by the United States of America at the instance and by the procurement of the defendants William F. Kettenbach, George H. Kester and William Dwyer, to the following named persons and for the lands described and set out after and opposite each name respectively:

Charles E. Loney: Lot four and the southwest quarter of the northwest quarter and the north half of the southwest quarter of section four, in township thirty-six north of range five east, of Boise meridian.

Mary A. Loney: The northeast quarter of the northeast quarter of [1293—963] section eighteen and the west half of the northwest quarter and the northwest quarter of the southwest quarter of section seventeen in township thirty-six north of range five east of Boise meridian.

Frank J. Bonney: The northwest quarter of the southwest quarter of section thirty-four in township thirty-seven north of range five east, and the east half of the southeast quarter of section thirty-three in township thirty-seven north of range five east, and lot one of section four in township thirty-six north of range five east, all of Boise meridian.

James T. Jolly: The south half of the northeast quarter, and the east half of the southeast quarter of section four, in township thirty-six north of range five east, of Boise meridian.

Effie A. Jolly: The east half of the northwest quarter and the north half of the northeast quarter of section seventeen in township thirty-six north of range five east of Boise meridian.

Charles S. Myers: The northwest quarter of section twenty-nine in township thirty-eight north of range six east of Boise meridian.

Jannie Myers: The west half of the southwest quarter of section twenty-five in township thirty-eight north of range five east of Boise meridian.

Clinton E. Perkins: Lots three and four in section three, in township thirty-six north of range five east, and the south half of the southwest quarter of section thirty-four in township thirty-seven north of range five east of Boise meridian.

All of which said lands being in the Lewiston Idaho land district and situate in Nez Perce County in the State and District of Idaho.

GEORGE W. WICKERSHAM,
Attorney General of the United States, Solicitor for
Complainant.

Dated September —, 1909. [1294—964]

Filed for record Sept. 7th, A. D. 1909, at 9 o'clock
A. M. Request of P. Gordon.

W. L. GIFFORD,
Recorder.

By C. L. Swormstede,

Fees \$1.20."

Deputy.

Mr. GORDON.—Said *lites pendentes* being read from the original record.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents offered in evidence.

**[Stipulation That Certain Instruments were Filed
for Record.]**

Mr. GORDON.—It is stipulated and agreed by and between the parties hereto in open court that the following instruments were filed for record in the office of the County Recorder of Nez Perce County, State of Idaho, and were thereafter recorded in said Nez Perce County, State of Idaho, as follows:
[1295—965]

JOEL H. BENTON, T. & S. No. 4055.

Description: S. $\frac{1}{2}$, SW. $\frac{1}{4}$, S. $\frac{1}{2}$, SE. $\frac{1}{4}$, Sec. 15, T.
39 N., R. 3 E., B. M.

THE UNITED STATES

to

JOEL H. BENTON.

Receiver's Receipt.

Dated November 21, 1902;

Recorded April 27, 1903, in Book D-2, p. 131, at request of Shoshone Abstract Co.

JOEL H. BENTON and LIDA ALICE BENTON,
Wife,

to

C. W. ROBNETT.

Deed.

Consideration, \$1600.00.

Dated December 29, 1902; acknowledged December

1478 *The United States of America*

29, 1902, before Otto Kettenbach, N. P., Nez Perce County, Idaho.

Recorded April 27, 1903, Book 83½, p. 88, Nez Perce County, at request of Shoshone Abstract Co.

Description same as above.

Witness: Otto Kettenbach.

UNITED STATES

to

JOEL H. BENTON.

Patent.

Dated February 25, 1904.

Recorded May 9, 1906, in Book 38, p. 112, Nez Perce County, at request of Lewiston Abstract Co.

Description same as above. [1296—966]

C. W. ROBNETT and JENNIE M. ROBNETT,
Wife,

to

ELIZABETH WHITE.

Deed.

Consideration, \$1.00.

Dated July 8, 1907; acknowledged July 8, 1907, before C. H. Lingenfelter, N. P., Nez Perce County, Idaho.

Recorded July 8, 1907, Book 93, p. 480, Nez Perce County, at request Lewiston Abstract Co.

Description same as above.

Witnesses: Minnie Eichenberger, C. H. Lingenfelter.

ELIZABETH WHITE, Widow,

to

CLEARWATER TIMBER COMPANY, Corp. of
State of Washington.

Warranty Deed.

Con. \$1600.00.

Dated Sept. 4, 1907; acknowledged Sept. 4, 1907, before John D. McConkey, N. P., Nez Perce County, Idaho.

Recorded Sept. 16, 1907, Book 94, p. 58, Nez Perce County, at request T. J. Davies.

Delivered to T. J. Davies.

Witnesses: J. D. McConkey, J. F. Pickering.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907. Book 1, p. 211, Nez Perce County.

Description same as above and other property.

[1297—967]

WILLIAM B. BENTON, T. & S. 4054.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$, SW. $\frac{1}{4}$, Sec. 15, T. 39 N., R. 3 E., B. M.

THE UNITED STATES

to

WILLIAM B. BENTON.

Receiver's Receipt.

Dated Nov. 21, 1902.

Recorded April 27, 1903, Book D-2, p. 131, Nez Perce County, at request of Shoshone Abstract Co.

WILLIAM B. BENTON

to

C. W. ROBNETT.

Deed.

Consideration, \$1600.00.

Dated Jany. —, 1902.

Acknowledged Jany. 10, 1903, before Otto Kettenbach, N. P., Nez Perce County, Idaho.

Recorded April 27, 1903, Book 83½, p. 87, Nez Perce County, at request of Shoshone Abstract Co.

Witnesses: Otto Kettenbach, E. C. Smith.

CLARENCE W. ROBNETT, and JENNIE M.
ROBNETT, Wife,

to

O. E. GUERNSEY, Dubuque, Iowa.

Mortgage, \$125,00.

Dated March 15, 1904.

Acknowledged March 15, 1904, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded March 21, 1904, Book 76, P. 532, Nez Perce County, at request of Shoshone Abstract Co.

[1298—968]

Released in Book 57, p. 364; Book 59, p. 392.

UNITED STATES

to

WILLIAM B. BENTON.

Patent.

Dated Feby. 25, 1904.

Recorded May 9, 1906, Book 38, p. 111, Nez Perce County, at request Lewiston Abstract Co.

Delivered to Lewiston Abstract Co.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211, records of Nez Perce County, Idaho, request U. S. Attorney.

Description same as above and other property.

C. W. ROBNETT and JENNIE M. ROBNETT,
Wife,

to

ELIZABETH WHITE.

Deed.

Consideration, \$1.00.

Dated July 8, 1907.

Acknowledged July 8, 1907, before C. H. Lingenfelter, N. P., Nez Perce County, Idaho.

Recorded July 8, 1907, Book 93, p. 490, Nez Perce County, Idaho, at request of Lewiston Abstract Co. and delivered to Lewiston Abstract Co.

Witnesses: Mamie Eichenberger, C. H. Lingenfelter.

[1299—969]

Description same as above and other property.

ELIZABETH WHITE, Widow,

to

CLEARWATER TIMBER COMPANY, a Corporation.

Warranty Deed, \$1250.00.

Dated Sept. 4, 1907.

Acknowledged Sept. 4, 1907, before John D. McConkey, N. P., Nez Perce County, Idaho.

Recorded Sept. 16, 1907, Book 94, p. 57, at request of F. J. Davies.

Description same as above and other property.

Witnesses: J. D. McConkey and J. F. Pickering.

[1300—970]

DAVID S. BINGHAM, T. & S. No. 4781.

Description: SE. $\frac{1}{4}$ of Sec. 17, T. 39 N., R. 5 E., B. M.

DAVID S. BINGHAM and LILLIAN BINGHAM,
Wife,
to

J. O'KEEFE.

Warranty Deed.

Con. \$1.00.

Dated July 26, 1904.

Acknowledged July 26, 1904, before Geo. W. Bailey,
N. P., Nez Perce County, Idaho.

Recorded Jan. 18, 1906, Book 84, p. 315, request Lewiston National Bank; delivered to Lewiston National Bank.

J. O'KEEFE and MARY E. O'KEEFE, Wife,
to

W. F. KETTENBACH and GEORGE H. KESTER.

Quitclaim Deed.

Con. \$1.00.

Dated July 30, 1904.

Acknowledged July 30, 1904, before George W. Bailey, N. P., Nez Perce County, Idaho.

Recorded Jan. 31, 1906, Book 84, p. 361, at request Lewiston National Bank.

Delivered to Lewiston National Bank.

Above described land and other property.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife, GEORGE H. KES-
TER and EDNA P. KESTER, Wife,
to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Con. \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-
ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, at request
C. W. Robnett.

Above land and other property. [1301—971]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1302—972]

LON E. BISHOP, T. & S. No. 4392.

Description: W. $\frac{1}{2}$, SE. $\frac{1}{4}$, S. $\frac{1}{2}$, SW. $\frac{1}{4}$, Sec. 23,
T. 39 N., R. 3 E., B. M.

UNITED STATES

to

LON E. BISHOP.

Receiver's Receipt.

Dated June 17, 1903.

Recorded August 10, 1903. Book D-2, p. 185, re-
quest of George H. Kester.

LON E. BISHOP, Single,

to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Deed.

Consideration, \$1,000.00.

Dated June 17, 1903.

Acknowledged June 17, 1903, before H. K. Barnett,
N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83½, p. 268, per re-
quest George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H. KES-
TER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, Corporation of
Idaho.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-
ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, at request
of C. W. Robnett.

Delivered to Lewiston National Bank.

Description same as above and other property.

For full description of deed, see [1303—973]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1304—974]

CHARLES DENT, T. & S. No. 4404.

Description, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 14, T.
39 N., R. 3 E., B. M.

UNITED STATES

to

CHARLES DENT.

Receiver's Receipt.

Dated June 23, 1903.

Recorded August 10, 1903, Book D-2, p. 186, by re-
quest George H. Kester.

CHARLES DENT, Single,
to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Deed.

Consideration, \$1,000.00.

Dated June 23, 1903.

Acknowledged June 23, 1903, before H. K. Barnett,
N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83- $\frac{1}{2}$, p. 270, at re-
quest George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H. KES-
TER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, a Corporation.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, request of C. W. Robnett.

Delivered to Lewiston National Bank.

Above described land and other property. [1305—975]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1306—976]

DRURY M. GAMMON, T. & S. No. 4477.

Description: SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ Sec. 26, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ Sec. 25, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ Sec. 35, T. 40 N., R. 3 E., B. M.

UNITED STATES

to

DRURY M. GAMMON.

Patent:

Dated Sept. 9, 1904.

Recorded Nov. 16, 1904, Book 91, p. 84, request Lewiston National Bank.

DRURY M. GAMMON

to

CLARENCE W. ROBNETT.

Deed.

Consideration, \$1.00.

Dated Oct. 9, 1903.

Acknowledged Oct. 9, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded Nov. 16, 1904, Book 91, p. 84, at request
Lewiston National Bank.

CLARENCE W. ROBNETT and JENNIE M.
ROBNETT, Wife,
to

LEWISTON NATIONAL BANK,

Deed.

Consideration, \$600.00.

Dated Nov. 25, 1904.

Acknowledged Nov. 26, 1904, before John H. Sheldts,
N. P., Nez Perce County, Idaho.

Recorded Dec. 20, 1904, Book 78, p. 228, at request
C. W. Robnett.

Above described land and other property. [1307—
977]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

LEWISTON NATIONAL BANK

to

IDAHO TRUST COMPANY.

Deed.

Consideration, \$1.00.

Dated Jan. 8, 1910.

Recorded Jan. 12, 1910, Book 103 of Deeds, p. 101,
Nez Perce County. [1308—978]

DANIEL W. GREENBERG, T. & S. No. 4780.

Description: SW. $\frac{1}{4}$ of Sec. 17, T. 39 N., R. 5 E.,
B. M.

DANIEL W. GREENBURG and VERTHA
GREENBURG, Wife,
to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Deed.

Consideration, \$1.00.

Dated August 15, 1904.

Acknowledged Aug. 17, 1904, before Otto Ketten-
bach, N. P., Nez Perce County, Idaho.

Recorded Jan. 24, 1906, Book 85, p. 285, at request
George H. Kester.

Delivered to George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H. KES-
TER and EDNA P. KESTER, Wife,
to

IDAHO TRUST COMPANY, a Corporation.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-

ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, at request
C. W. Robnett.

Above described land and other property.

UNITED STATES

vs.

WILLIAM F., KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1309—979]

MARTHA E. HALLETT, T. & S. No. 4079.

Description: Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$ Sec. 10, T.
38 N., R. 6 E., B. M.

THE UNITED STATES

to

MARTHA E. HALLETT.

Patent.

Dated December 31, 1904.

Recorded May 29, 1908, Book 40, p. 255, request
Lewiston Abstract Co.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1310—980]

WILLIAM HAEVERNICK, T. & S. No. 4635.

ALMA HAEVERNICK, T. & S. No. 4636.

Description: SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ Sec. 23, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$,
Sec. 26, T. 37 N., R. 2 E., B. M. SW. $\frac{1}{4}$ NE. $\frac{1}{4}$
Sec. 26, T. 37 N., R. 2 E., B. M.

WILLIAM HAEVERNICK and ALMA HAEV-
ERNICK,

to

FRANK W. KETTENBACH.

Warranty Deed.

Consideration, \$650.00.

Dated June 3, 1904.

Acknowledged June 14, 1907, before Ray C. Hyke,
N. P., Nez Perce County, Idaho.

Recorded June 14, 1907, Book 88, p. 574, at request
Lewiston Abstract Co.

Delivered to Lewiston Abstract Co.

FRANK W. KETTENBACH and AMY D. KET-
TENBACH,

to

CLEARWATER TIMBER CO.

Warranty Deed.

Consideration, \$800.00.

Dated June 12, 1907.

Acknowledged June 14, 1907, before Ray C. Hyke,
N. P., Nez Perce County, Idaho.

Recorded July 13, 1907, Book 88, p. 607, at request
F. J. Daviës.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Description: SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ Sec. 23; NE. $\frac{1}{4}$ NE. $\frac{1}{4}$
Sec. 26, T. 37 N., R. 2 E., B. M. [1311—981]

SOREN HANSEN T. & S. No. 4377.

Description: SE. $\frac{1}{4}$ Sec. 10, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

SOREN HANSEN.

Receiver's Receipt.

Dated June 5, 1903.

Recorded Oct. 10, 1903, Book D-2, p. 199, Nez Perce
County, Idaho, at request of George H. Kester.

SOREN HANSEN, Single,

to

CURTIS THATCHER.

Mortgage, \$725.00.

Dated June 5, 1903.

Acknowledged June 5, 1903, before John B. Ander-
son, N. P., Nez Perce County, Idaho.

Recorded Oct. 10, 1903, Book 76, p. 483, at request
George H. Kester.

Witness: John B. Anderson.

Release, June 11, 1909, Book 61, p. 211.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Above described land and other property.

UNITED STATES

to

SOREN HANSEN

Patent.

Dated August 3, 1904.

Recorded May 18, 1908, Book 40, p. 232, at request
Lewiston Abstract Co. [1312—982]SOREN HANSEN and ANNA K. HANSEN, Wife,
to
CLEARWATER TIMBER CO.

Warranty Deed, \$2,200.00.

Dated May 16, 1908.

Acknowledged May 16, 1908, before J. B. West,
N. P., Nez Perce County, Idaho.Recorded June 11, 1909, at request W. F. Ketten-
bach, Book 97, p. 206. [1313—983]

GEORGE W. HARRINGTON T. & S. No. 4213.

Description: W. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW.
 $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 10, T. 36 N., R. 5 E., B. M.

UNITED STATES

to

GEORGE W. HARRINGTON.

Receiver's Receipt,

Dated February 11, 1903.

Recorded March 7, 1903, Book D-2, p. 116, at request
Security Abstract Co.

UNITED STATES

to

GEORGE W. HARRINGTON.

Patent.

Dated July 2, 1904.

Recorded January 6, 1906. Book 38, p. 200, at re-
quest Lewiston Abstract Co.

Delivered to Lewiston Abstract Co.

GEORGE W. HARRINGTON, Single,

to

BERTHA M. TURRISH (Moscow, Idaho).

Deed.

Consideration, \$1,500.00.

Dated February 12, 1903.

Acknowledged February 12, 1903, before Otto Kettenbach, N. P., Nez Perce County, Idaho.

Recorded March 7, 1903, Book 83½, p. 44, Nez Perce County.

Request Security Abstract Co. [1314—984]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

JAMES TURRISH and BERTHA M. TURRISH,
Wife,

to

WESTERN LAND COMPANY.

Deed.

Consideration, \$1.00.

Dated August 16, 1905.

Acknowledged August 16, 1905, before R. E. Pinney,
N. P., Spokane, Washington.

Recorded August 21, 1905, Book 78, p. 626, Nez Perce
County, at request John J. Skuse.

Delivered to John J. Skuse.

Conveys W. ½ NE. ¼, NW. ¼, N. ½ SW. ¼, Sec.

10, T. 36 N., R. 5 E., B. M., and other property.

[1315—985]

WILLIAM E. HELKENBERG, T. & S. No. 5015.

Description: NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ Sec. 28, NE. $\frac{1}{4}$ SE.

$\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 29 T. 39 N., R. 5 E., B. M.

UNITED STATES

to

WILLIAM E. HELKENBERG.

Receiver's Receipt.

Dated Jan. 20, 1905.

Recorded Nov. 11, 1895, Book 3, p. 283, request Lewiston Abstract Co.

Delivered to Lewiston Abstract Co.

WILLIAM E. HELKENBERG and LILLIAN
HELKENBERG

to

GEORGE H. KESTER and WILLIAM F. KETTENBACH.

Warranty Deed.

Consideration, \$900.00.

Dated October 18, 1905.

Acknowledged October 18, 1905, before Thos. Mullen,
N. P., Nez Perce County, Idaho.

Recorded Nov. 11, 1905, Book 81, p. 308, request Lewiston Abstract Co.

Delivered to Lewiston Abstract Co.

Description: NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ Sec. 28, NE. $\frac{1}{4}$ SE.

$\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 29, T. 39 N., R. 5 E.,
B. M.

Witnesses: Thomas Mullen and Eugene A. Cox.

[1316—986]

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H. KES-
TER and EDNA P. KESTER, wife,

to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-
ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, request C.
W. Robnett.

Delivered to Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1317—987]

EDWARD M. HYDE, T. & S. No. 4412.

Description: NW. $\frac{1}{4}$ of Sec. 22, T. 39 N., R. 3 E.,
B. M.

UNITED STATES

to

EDWARD M. HYDE.

Receiver's Receipt.

Dated June 26, 1903.

Recorded August 10, 1903, Book D-2, p. 184, request
George H. Kester.

EDWARD M. HYDE and MAUDE HYDE, Wife,
to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Deed.

Consideration, \$1.00.

Dated June 26, 1903.

Acknowledged June 26, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83½, p. 265, request George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife, GEORGE H. KESTER and EDNA P. KESTER, Wife,
to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, request C. W. Robnett.

Delivered to Lewiston National Bank.

Land above described and other property. [1318—
988]

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded October 16, 1907, Book 1, p. 211. [1319—
989]

FRANCES A. JUSTICE, T. & S. No. 4771.

Description: Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 19, T. 38
N., R. 6 E., B. M.

UNITED STATES

to

FRANCES A. JUSTICE.

Receiver's Receipt.

Dated July 13, 1904.

Recorded March 30, 1906, Book 3, p. 307, request
Lewiston Abstract Co.

FRANCES A. JUSTICE, Widow,

to

KITTIE E. DWYER.

Deed.

Consideration, \$900.00.

Dated March 30, 1906.

Acknowledged March 30, 1906, before Thos. Mullen,
N. P., Nez Perce County, Idaho.

Recorded April 4, 1906, Book 85, p. 481, request Wm.
Dwyer.

Delivered to Wm. Dwyer.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1320—990]

EDNA P. KESTER, T. & S. No. 4773.

Description: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 14, T. 38 N., R. 5 E., B. M.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Note: There appears to be no other instrument of record. Assessor's records show the property to be assessed in the name of Edna P. Kester. [1321—991]

ELIZABETH KETTENBACH, T. & S. No. 4774.

Description: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 13, Tp. 38 N., R. 5 E., B. M.

UNITED STATES

to

ELIZABETH KETTENBACH.

Patent.

Dated December 31, 1904.

Recorded April 18, 1908, Book 40, p. 182, request Elizabeth Kettenbach.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1322—992]

JOHN W. KILLINGER T. & S. No. 4357.

Description: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 13, T. 39 N., R. 2 E., B. M.

UNITED STATES

to

JOHN W. KILLINGER.

Patent.

Dated August 3, 1904.

Recorded October 14, 1905, Book 38, p. 7, Nez Perce

County, request Lewiston Abstract Company.

Delivered to Lewiston Abstract Company.

JOHN W. KILLINGER, Single,

to

E. P. MANOR (Spokane, Wash.).

Mortgage. \$500.00.

Dated October 16, 1905.

Acknowledged October 16, 1905, before N. D. Walling, N. P., Spokane, Wash.

Recorded October 17, 1905, Book 74, p. 564, Nez

Perce County, request E. P. Manor.

Witnesses: N. D. Walling, C. J. Anderson.

JOHN W. KILLINGER,

to

GEO. E. THOMPSON.

Land Contract.

Consideration, \$100.00.

Dated March 2, 1907.

Recorded March 4, 1907, Book Misc. E., p. 74, Nez

Perce County, request N. D. Walling.

Delivered to N. D. Walling.

Note: Receipt for \$100.00 to apply on purchase price. Deed in escrow. [1323—993]

1500 *The United States of America*

JOHN W. KILLINGER, Single,
to
GEORGE E. THOMPSON.

Warranty Deed.

Consideration, \$1.00.

Dated July 8, 1907.

Acknowledged July 8, 1907, before N. D. Walling,
N. P., Spokane, Wash.

Recorded July 9, 1907, Book 88, p. 604, Nez Perce
County, request N. D. Walling.

Delivered to N. D. Walling.

Subject to a mortgage to E. P. Manor for \$500.00.

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens,

Recorded October 16, 1907, Book 1, p. 211, Nez Perce
County.

Land above described and other property. [1324—
994]

WILLIAM McMILLEN T. & S. No. 4784.

Description: SE. 1/4 of Sec. 21, T. 39 N., R. 5 E., B. M.

UNITED STATES

to

WILLIAM McMILLEN.

Receiver's Receipt.

Dated July 18, 1904.

Recorded April 9, 1906, Book 3, p. 309, request Lew-
iston Abstract Co.

WILLIAM McMULLAN, Single,
to
KITTIE E. DWYER.

Deed.

Consideration, \$1,450.00.

Dated April 9, 1906.

Acknowledged April 9, 1906, before J. B. West, N.
P., Nez Perce County, Idaho.

Recorded April 9, 1906, Book 85, p. 500, request Will-
iam Dwyer.

Delivered to William Dwyer.

KITTIE E. DWYER and WILLIAM DWYER,
to
LEWISTON NATIONAL BANK.

Mortgage, \$12,100.00.

Dated July 8, 1907, before Frank E. Brown, N. P.,
Clarkston, Wash.

Recorded July 10, 1907, Book 85, p. 10, request C.
W. Robnett.

Released December 21, 1907; marginal release.

Above-described land and other property. [1325—
995]

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

WILLIAM DWYER and KITTIE E. DWYER,
to
LEWISTON NATIONAL BANK.

Mortgage, \$12,900.00.

Dated December 30, 1907.

Acknowledged Dec. 31, 1907, before Frank E. Brown,
N. P., Clarkston, Wash.

Recorded Dec. 31, 1907, Book 83½, p. 96, request F.
W. Kettenbach.

Above land and other property.

WILLIAM DWYER and KITTIE DWYER,
to

IDAHO TRUST COMPANY, Corp.

Deed.

Consideration, \$1.00.

Dated December 31, 1908.

Acknowledged December 31, 1908, before Ray C.
Hyke, N. P., Nez Perce County, Idaho.

Recorded January 4, 1909, Book 99, p. 464, request
Lewiston Abstract Co.

Above-described land and other property. [1326—
996]

GEORGE MORRISON T. & S. No. 4411.

Description: NE. ¼ Sec. 22, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

GEORGE MORRISON.

Receiver's Receipt.

Dated June 26, 1903.

Recorded August 10, 1903, Book D-2, p. 184, request
George H. Kester.

GEORGE MORRISON and MARY A. MORRISON,
Wife,

to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Deed.

Consideration, \$1.00.

Dated June 26, 1903.

Acknowledged June 26, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83-1/2, page 264, request George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H. KESTER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, request C. W. Robnett.

Delivered to Lewiston National Bank.

Above-described land and other property. [1327—
997]

UNITED STATES

to

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1328—
998]

JOHN E. NELSON T. & S. No. 4359.

Description: NE. $\frac{1}{4}$ Sec. 24, T. 39 N., R. 2 E., B. M.

UNITED STATES

to

JOHN E. NELSON.

Receiver's Receipt.

Dated May 22, 1903.

Recorded July 31, 1903, Book D-2, p. 179, Nez Perce
County, Idaho, request George H. Kester.

JOHN E. NELSON and ALICE MABEL NELSON,
Wife,

to

CURTIS THATCHER.

Mortgage, \$725.00.

Dated May 22, 1903.

Acknowledged May 22, 1903, before Jno. E. Nickerson,
N. P., Nez Perce County, Idaho.

Acknowledged June 1, 1903, before W. S. Macrum,
N. P., Multnomah County, Oregon.

Recorded July 31, 1903, Book 76, p. 464, Nez Perce
County, request of George H. Kester.

Witness: Jno. E. Nickerson.

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1329—999]

JOHN E. NELSON and ALICE M. NELSON, Wife,
to

E. W. THATCHER.

Deed.

Consideration, \$1060.00.

Dated May 18, 1908.

Acknowledged May 18, 1908, before Fred E. Butler,
N. P., Nez Perce County, Idaho.

Recorded May 20, 1908, Book 98, p. 647, Nez Perce
County, request C. T. Thatcher.

UNITED STATES

to

JOHN E. NELSON.

Patent.

Dated August 3, 1904.

Recorded May 20, 1908, Book 40, p. 243, request C.
T. Thatcher. [1330—1000]

FREDERICK W. NEWMAN T. & S. No. 4394.

Description: S. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 23, T.
39 N., R. 3 E., B. M.

UNITED STATES

to

FREDERICK W. NEWMAN.

Receiver's Receipt.

Dated June 17, 1903.

Recorded August 10, 1903, Book D-2, p. 184, request
of George H. Kester.

FREDERICK W. NEWMAN and LOLIA NEWMAN, Wife,

to

WILLIAM F. KETTENBACH, Wife; GEORGE H. KESTER.

Deed.

Consideration, \$1,000.00.

Dated June 17, 1903.

Acknowledged June 17, 1903, before H. K. Barnett, N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83-1/2, p. 266, request of George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE KETTENBACH, Wife; GEORGE H. KESTER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, request of C. W. Robnett.

Delivered to Lewiston National Bank. [1331—1001]

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Above-described land and other property. [1332—
1002]

VAN V. ROBERTSON, T. & S. No. 4352.

Description: SW. $\frac{1}{4}$, Sec. 10, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

VAN V. ROBERTSON.

Receiver's Receipt.

Dated May 20, 1903.

Recorded February 15, 1904, Book D-2, p. 238, Nez

Perce County, at request of C. W. Robnett.

VAN V. ROBERTSON and NETTIE B. ROBERT-
SON, Wife,

to

LEWISTON NATIONAL BANK, Corp.

Deed.

Consideration, \$600.00.

Dated September 27, 1904.

Acknowledged Oct. 6, 1904, before T. H. Bartlett,
N. P., Idaho County, Idaho.

Recorded Oct. 10, 1904, Book 91, p. 35, Nez Perce
County, at request of Lewiston National Bank.

VAN V. ROBERTSON and NETTIE B. ROB-
ERTSON, Wife,

to

CLARENCE W. ROBNETT.

Mortgage, \$500.00.

Dated May 20, 1903.

Acknowledged May 20, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded February 15, 1904, Book 76, p. 518, Nez Perce County, at request of C. W. Robnett.

Released in Book 78, p. 586. [1333—1003]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Above-described land and other property. [1334—1004]

HATTIE ROWLAND T. & S. No. 4785.

Description: SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 15, T. 38 N., R. 5 E., B. M.

UNITED STATES

to

HATTIE ROWLAND.

Receiver's Receipt.

Dated July 18, 1904.

Recorded April 9, 1906, Book 3, p. 309, at request Lewiston Abstract Co.

HATTIE ROWLAND and BENJAMIN F. ROWLAND, Husband,

to

KITTIE E. DWYER.

Deed.

Consideration, \$1,150.00.

Dated April 9, 1906.

Acknowledged April 9, 1906, before Thos. Mullen,

N. P., Nez Perce County, Idaho.

Recorded in Book 85, p. 502, at request of William Dwyer.

Delivered to William Dwyer.

Witnesses: Thos. Mullen and Alex. Kasberg.

WILLIAM DWYER and KITTIE E. DWYER,
Wife,
to

LEWISTON NATIONAL BANK.

Mortgage.

\$12,900.00.

Dated December 30, 1907.

Acknowledged December 30, 1907, before Frank E. Brown, N. P., Clarkston, Wash.

Recorded December 31, 1907, Book 83, p. 96, at request of F. W. Kettenbach.

Delivered to F. W. Kettenbach.

Above-described land and other property. [1335—
1005]

KITTIE E. DWYER and WILLIAM DWYER
to

LEWISTON NATIONAL BANK.

Mortgage.

\$12,100.00.

Dated December 8, 1907.

Acknowledged July 8, 1907, before Frank E. Brown, N. P., Clarkston, Wash.

Recorded July 10, 1907, Book 85, p. 10, at request C. W. Robnett.

Delivered to Lewiston National Bank.

Above-described land and other property.

Released Dec. 21, 1907; marginal release.

WILLIAM DWYER and KITTIE E. DWYER

to

IDAHO TRUST COMPANY, Corp.

Deed.

Consideration \$1.00.

Dated December 31, 1908.

Acknowledged December 31, 1908, before Ray C.

Hyke, N. P., Nez Perce County, Idaho.

Recorded January 4, 1909, Book 99, p. 464, at request Lewiston Abstract Company.

Above described land and other property.

UNITED STATES

to

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1336—
1006]

CHARLES SMITH, T. & S. No. 4405.

Description: NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 14, SE. $\frac{1}{4}$ NE.

$\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

CHARLES SMITH.

Receiver's Receipt.

Dated June 23, 1903.

Recorded August 10, 1903, Book D-2, p. 185, at request of George H. Kester.

CHARLES SMITH, Single,

to

WILLIAM F. KETTENBACH, and GEORGE H.
KESTER.

Deed.

Consideration, \$1,000.00.

Dated June 23, 1903.

Acknowledged June 23, 1903, before H. K. Barnett,
N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83½, p. 269, at
request of George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H.
KESTER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-
ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, at request
of C. W. Robnett.

Delivered to Lewiston National Bank.

Above-described land and other property. [1337—
1007]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1338—
1008]

GEARY VANARTSDALEN T. & S. No. 4641.

Description: NE. $\frac{1}{4}$ Sec. 25, T. 37 N., R. 5 E., B. M.

UNITED STATES

to

GEARY VANARTSDALEN.

Patent.

Dated November 1, 1904.

Recorded Dec. 13, 1904, Book 55, p. 382, at request
J. C. Jansen.

GEARY VANARTSDALEN, Single,

to

CLEARWATER TIMBER COMPANY (Corp. of
St. Paul, Minn.)

Warranty Deed.

Consideration, \$800.00.

Dated December 2, 1905.

Acknowledged December 13, 1905, before Fred Judd,
J. P., Nez Perce County, Idaho.

Recorded Dec. 23, 1905, Book 81, p. 399, at request
T. J. Davis, and delivered to T. J. Davis.

Witnesses: Fred H. Judd and Mrs. Clarence Judd.

UNITED STATES

to

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1339—
1009]

PEARL WASHBURN, T. & S. No. 4306.

Description: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 27,
T. 40 N., R. 4 E., B. M.

UNITED STATES

to

PEARL WASHBURN.

Receiver's Receipt.

Dated April 16, 1903.

Recorded April 18, 1903, Book B-2, p. 131, at request of W. F. Kettenbach.

PEARL WASHBURN and CHARLES O. WASHBURN, Husband,

to

W. F. KETTENBACH.

Mortgage, \$400.00.

Dated April 16, 1903.

Acknowledged April 16, 1903, before H. K. Barnett,
N. P., Nez Perce County, Idaho.

Recorded April 18, 1903, Book 76, p. 420, at request of W. F. Kettenbach.

Released June 5, 1907, Book 59, p. 351.

PEARL WASHBURN and CHARLES O. WASHBURN, Husband,

to

JAMES B. McGRANE.

Deed.

Consideration, \$900.00.

Dated May 23, 1906.

Acknowledged Oct. 31, 1906, before J. H. Smith, N.

P., Los Angeles, Cal., and before A. W. Ewing,
N. P., Los Angeles, Cal.

Recorded Nov. 9, 1906, Book 89, p. 496, at request
J. B. McGrane.

Delivered to J. B. McGrane. [1340—1010]

UNITED STATES

to

PEARL WASHBURN.

Patent.

Dated July 2, 1904.

Recorded May 6, 1907, Book 38, p. 316, at request
Lewiston Abstract Company, and delivered to
Lewiston Abstract Co.

PEARL WASHBURN and CHARLES O. WASH-
BURN, Husband,
to

JAMES B. McGRANE.

Quitclaim Deed.

Consideration, \$1.00.

Dated May 31, 1907.

Acknowledged May 31, 1907, before J. H. Smith,
N. P., Los Angeles, Cal.

Recorded June 6, 1907, Book 86, p. 300, at request
Lewiston Abstract Co., and delivered to Lewis-
ton Abstract Co.

JAMES B. McGRANE and EDNA McGRANE,
Wife,

to

JOHN E. CHAPMAN.

Deed.

Consideration, \$7,500.00.

Dated May 8, 1907.

Acknowledged May 8, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded June 6, 1907, Book 93, p. 421, at request
Lewiston Abstract Co.

Above-described land and other property. [1341—
1011]

JOHN E. CHAPMAN, Single,

to

CLEARWATER TIMBER COMPANY, Ltd., a
Corporation.

Warranty Deed.

Consideration, \$8,650.00.

Dated June 7, 1907.

Acknowledged June 7, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded June 21, 1907, Book 88, p. 579, at request
of F. J. Davies, and delivered to F. J. Davies.

Above-described land and other property.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1342—
1012]

ELIZABETH WHITE, T. & S. No. 4776.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 23,
T. 38 N., R. 5 E., B. M.

1516 *The United States of America*

UNITED STATES

to

ELIZABETH WHITE.

Receiver's Receipt.

Dated July 14, 1904.

Recorded April 27, 1906, Book 3, p. 320, at request
Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

UNITED STATES

to

ELIZABETH WHITE.

Patent.

Dated December 31, 1904.

Recorded Jan. 15, 1909, Book 40, p. 467, at request
Nez Perce County Abstract Co. [1343—1013]

MAMIE P. WHITE, T. & S. No. 4777.

Description: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 14, T.
38 N., R. 5 E., B. M.

UNITED STATES

to

MAMIE P. WHITE.

Receiver's Receipt.

Dated July 14, 1904.

Recorded April 27, 1906, Book 3, p. 320, at request
of Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

UNITED STATES

to

MAMIE P. WHITE.

Patent.

Dated December 31, 1904.

Recorded Jan. 15, 1909, Book 40, p. 466, at request
Nez Perce County Abstract Co.

WILLIAM J. WHITE and MAMIE P. WHITE

to

ELIZABETH WHITE.

Deed.

Consideration \$1.00.

Dated January 13, 1909.

Acknowledged Jan. 14, 1909, before Ray C. Hyke,
N. P., Nez Perce County, Idaho.

Recorded Jan. 15, 1909, Book 99, p. 484, at request
of Nez Perce County Abstract Company.

Above-described land and other property. [1344—
1014]

WILLIAM J. WHITE, T. & S. No. 4775.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 14, T.
38 N., R. 5 E., B. M.

UNITED STATES

to

WILLIAM J. WHITE.

Receiver's Receipt.

Dated July 14, 1904.

Recorded April 27, 1906, Book 3, p. 319, at request
Lewiston National Bank.

UNITED STATES

to

WILLIAM J. WHITE.

Patent.

Dated Dec. 31, 1904.

Recorded Jan. 15, 1909, Book 40, p. 465, at request
Nez Perce County Abstract Co.WILLIAM J. WHITE and MAMIE P. WHITE,
to

ELIZABETH WHITE.

Deed.

Consideration, \$1.00.

Dated Jan. 13, 1909.

Acknowledged Jan. 14, 1909, before Ray C. Hyke,
N. P., Nez Perce County, Idaho.Recorded Jan. 15, 1909, Book 99, p. 484, at request
Nez Perce County Abstract Co.

Above-described land and other property.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Above-described land and other property. [1345—
1015]

GUY L. WILSON, T. & S. No. 4770.

Description: Lots 3, 4, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE.
 $\frac{1}{4}$, Sec. 19, T. 39 N., R. 5 E., B M.

GUY L. WILSON and ELLA J. WILSON, wife,
to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Deed.

Consideration, \$1.00.

Dated July 13, 1904.

Acknowledged July 13, 1904, before Otto Ketten-
bach, N. P., Nez Perce County, Idaho.

Recorded June 24, 1907, Book 93, p. 456, at request
Lewiston National Bank.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, wife; GEORGE H. KES-
TER and EDNA P. KESTER, wife,
to

IDAHO TRUST COMPANY, a Corporation.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-
ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, at request
of C. W. Robnett.

Above-described land and other property.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1346—1016]

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the admission of each, all or any of the documents in evidence, or the evidence in relation thereto, in so far as they relate to bills No. 388 and 407, upon the ground and for the reason that neither of the entries therein referred to are involved in those two particular actions. [1347—1017]

[Stipulation as to Taxes.]

Mr. TANNAHILL.—It is stipulated by and between the respective parties hereto in open court that the records of the office of the assessor and ex-officio tax collector of Nez Perce County, State of Idaho, show that the lands entered by the following named persons under the Timber and Stone Act were assessed to and the taxes thereon paid by the following named persons for the following years, respectively:

That the tract of land entered by Carrie D. Maris was assessed to Clarence W. Robnett in 1905, and the taxes thereon were paid by Clarence W. Robnett for said year; that said tract of land was assessed to Clarence W. Robnett in 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Clarence W. Robnett in 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Ket-

tenbach in 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach in 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by William B. Benton was assessed to Clarence W. Robnett in 1905, and the taxes thereon were paid by Clarence W. Robnett for said year; that said tract of land was assessed to Clarence W. Robnett in 1906, and the taxes thereon were paid by Clarence W. Robnett for said year; that said tract of land was assessed to Clarence W. Robnett in 1907, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company in 1908, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed in 1909 to the Clearwater Timber Company, and the taxes thereon were paid by the Clearwater Timber Company for said year; and that said tract of land was assessed to the [1348—1018] Clearwater Timber Company in 1910.

That the tract of land entered by Joel H. Benton was assessed to Clarence W. Robnett in 1905, and the taxes thereon were paid by Clarence W. Robnett for said year; that said tract of land was assessed to Clarence W. Robnett in 1906, and the taxes thereon paid by Clarence W. Robnett for said year; that said tract of land was assessed to Clarence W. Robnett

in 1907, and the taxes thereon paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company in 1908, and the taxes thereon paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company in 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; and that said tract of land was assessed to the Clearwater Timber Company in 1910.

That the tract of land entered by Henderson T. Dizney was assessed to Henderson T. Dizney for the year 1905, and the taxes thereon were paid by J. G. Fralick for said year; that said tract of land was assessed to Henderson T. Dizney in 1906, and the taxes thereon were paid by J. G. Fralick for said year; that the said tract of land was assessed to the Monarch Lumber Company for the year 1907, and the taxes thereon paid by the Monarch Lumber Company for said year; that said tract of land was assessed to the Monarch Lumber Company for the year 1908, and the taxes thereon were paid by the Milwaukee Land Company for said year; that the taxes thereon were assessed to the Milwaukee Land Company for the year 1909, and the taxes thereon paid by the Milwaukee Land Company for said year; and that said tract of land was assessed to the Milwaukee Land Company in 1910.

That the tract of land entered by George W. Harrington was assessed to George W. Harrington for the year 1905, and the taxes [1349—1019] thereon were paid by the said George W. Harrington for

said year; that said tract of land was assessed to the Western Land Company for the year 1906, and the taxes thereon were paid by the Western Land Company for said year; that said tract of land was assessed to the Western Land Company for the year 1907, and the taxes thereon paid by J. J. Turrish for said year; that said tract of land was assessed to the Western Land Company for the year 1908, and the taxes thereon were paid by the Western Land Company for said year; that said tract of land was assessed to the Western Land Company for the year 1909, and the taxes thereon were paid by the Western Land Company for said year; and that said tract of land was assessed to the Western Land Company for the year 1910.

That the tract of land entered by Van V. Robertson was assessed to Van V. Robertson for the year 1905, and the taxes thereon paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1906, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1907, and the taxes thereon paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1908, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1909, and the taxes thereon were paid by the Lewiston National Bank for said year; and that said tract of

land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by John E. Nelson was assessed to John E. Nelson for the year 1905, and the taxes thereon [1350—1020] were paid by C. Thatcher for said year; that said tract of land was assessed to John E. Nelson for the year 1906, and the taxes thereon paid by C. Thatcher for said year; that said tract of land was assessed to C. Thatcher for the year 1909, and the taxes thereon paid by C. Thatcher for said year; and that said tract of land was assessed to C. Thatcher for the year 1910.

That the tract of land entered by Soren Hansen was assessed to Soren Hansen for the year 1905, and the taxes thereon were paid by the Lewiston Abstract Company for said year; that said tract of land was assessed to Soren Hansen for the year 1906, and the taxes thereon paid by the Lewiston Abstract Company for said year; that said tract of land was assessed to Soren Hansen for the year 1907, and the taxes thereon paid by Soren Hansen for said year; that said tract of land was assessed to Soren Hansen for the year 1908, and the taxes thereon paid by Soren Hansen for said year; that said tract of land was assessed to William F. Kettenbach for the year 1909, and the taxes thereon paid by William F. Kettenbach for said year; and that said tract of land was assessed to William F. Kettenbach for the year 1910.

That the tract of land entered by John H. Little was assessed to John H. Little for the year 1905, and the taxes thereon paid by William F. Kettenbach for

said year; that said tract of land was assessed to William F. Kettenbach for the year 1906, and the taxes thereon paid by William F. Kettenbach for said year; that the tract of land was assessed to William F. Kettenbach for the year 1907, and the taxes thereon paid by William F. Kettenbach for said year; that said tract of land was assessed to William F. Kettenbach for the year 1908, and the taxes thereon paid by the Idaho Trust Company for said year; that said tract of land was assessed to William F. Kettenbach for the year 1909, and the taxes thereon paid by William F. Kettenbach for said year; and that said tract of land was assessed to William F. Kettenbach [1351—1021] for the year 1910.

That the tract of land entered by Ellsworth M. Harrington was assessed to Ellsworth M. Harrington for the year 1905, and the taxes thereon paid by Ellsworth M. Harrington for said year; that said tract of land was assessed to Ellsworth M. Harrington for the year 1906, and the taxes thereon paid by William F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon paid by William F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by Wren Pierce was assessed to Wren Pierce for the year 1905, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by Benjamin F. Bashor was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land [1352—1022] was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by James C. Evans was assessed to James C. Evans for the year 1905,

and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Pearl Washburn was assessed to the Clearwater Timber Company for the year 1908, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; and that said tract of land was assessed to the Clearwater Timber Company for the year 1910. [1353—1023]

That the tract of land entered by Lon E. Bishop was assessed to Lon E. Bishop for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Ket-

tenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Joseph B. Clute was assessed to Joseph B. Clute for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Frederick W. Newman was assessed to Frederick W. Newman for the year 1905, and the taxes thereon were paid by

Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, [1354—1024] and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year, and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the land entered by Francis M. Long was assessed to Francis M. Long for the year 1905, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the land entered by John H. Long was assessed to John H. Long for the year 1905, and the

taxes thereon were paid by W. F. Kettenbach; that said tract of land was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon paid by the Idaho Trust Company [1355—1025] for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by Benjamin F. Long was assessed to Benjamin F. Long for the year 1905, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by Charles Dent

was assessed to H. W. Dent for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910. [1356—1026]

That the tract of land entered by Charles Smith was assessed to Charles Smith for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by said Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by said Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract

of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by George Morrison was assessed to George Morrison for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Edward M. Hyde was assessed to Edward M. Hyde for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that [1357—1027] said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that

said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Bertsel H. Ferris was assessed to Bertsel H. Ferris for the year 1905, and the taxes thereon were paid by Bertsel H. Ferris for said year; that said tract of land was assessed to Bertsel H. Ferris in 1906, and the taxes thereon were paid by Charles L. McDonald for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year, and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by George Ray Robinson was assessed to George Ray Robinson for the year 1905, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon

were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year [1358—1028] 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by Drury M. Gammon was assessed to Drury M. Gammon for the year 1905, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1906, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1907, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1908, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1909, and the taxes thereon were paid by the Lewiston National Bank for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Charles W. Taylor was assessed to Charles W. Taylor for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and eKttenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land

was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910. [1359—1029]

That the land entered by Jackson O'Keefe was assessed to Jackson O'Keefe for the year 1905, and the taxes thereon paid by Jackson O'Keefe for said year; that said tract of land was assessed to Jackson O'Keefe for the year 1906, and the taxes thereon paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Western Land Company for the year 1907, and the taxes thereon were paid by F. M. Saling for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Edgar J. Taylor was assessed to Edgar J. Taylor for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was

assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Joseph H. Prentice was assessed to Joseph H. Prentice for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes [1360—1030] thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907 and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; that said land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by George H. Kester was assessed to George H. Kester for the year 1905, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to George H. Kester for the year 1906, and the taxes thereon were paid by George H. Kester for said year; that said tract of land was assessed to George H. Kester for the year 1907, and the taxes thereon were paid by George H. Kester for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Guy L. Wilson was assessed to Guy L. Wilson for the year 1905, and the taxes thereon were paid by Raymond Allen (delinquent) for said year; that said tract of land was assessed to Guy L. Wilson for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to Guy L. Wilson for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes [1361—1031] thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1909, and the taxes thereon were paid by the Idaho

Trust Company for said year, and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

The tract of land entered by Frances A. Justice was assessed to Frances A. Justice for the year 1905, and the taxes thereon were paid by Kittie E. Dwyer for said year; that said tract of land was assessed to Frances A. Justice for the year 1906, and the taxes thereon were paid by Kittie E. Dwyer for said year; that said tract of land was assessed to Frances A. Justice for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1908, and the taxes thereon were paid by Kittie E. Dwyer for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to Kittie E. Dwyer for the year 1910.

That the tract of land entered by Fred E. Justice was assessed to Fred E. Justice for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Fred E. Justice for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Fred E. Justice for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester

and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910. [1362—1032]

That the tract of land entered by Edna P. Kester was assessed to Edna P. Kester for the year 1905, and the taxes were paid by Edna P. Kester for said year; that said land was assessed to Edna P. Kester for the year 1906, and the taxes thereon were paid by W. F. Kettenbach; that said tract of land was assessed to Edna P. Kester for the year 1907, and the taxes thereon were paid by Edna P. Kester for said year; the said tract of land was assessed to Edna P. Kester for the year 1908, and the taxes thereon were paid by Edna P. Kester for said year; that said tract of land was assessed to Edna P. Kester for the year 1909, and the taxes thereon were paid by Edna P. Kester for said year; and that said tract of land was assessed to Edna P. Kester for the year 1910.

That the tract of land entered by Elizabeth Kettenbach was assessed to Elizabeth Kettenbach for the year 1905, and the taxes thereon were paid by Elizabeth Kettenbach for said year; that said tract of land was assessed to Elizabeth Kettenbach for the year 1906, and the taxes thereon for said year were paid by the Idaho Trust Company; that said tract of land was assessed in the year 1907 to Elizabeth Kettenbach, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to Elizabeth Kettenbach for the year 1908, and the taxes thereon were paid by Kester and

Kettenbach for said year; that said tract of land was assessed to Elizabeth Kettenbach for the year 1909, and the taxes thereon were paid by Elizabeth Kettenbach for said year; and that said tract of land was assessed to Elizabeth Kettenbach for the year 1910.

That the land entered by William J. White was assessed to William J. White for the year 1909, and the taxes thereon were paid by the Lewiston National Bank for said year; that said land was assessed to William J. White for the year 1906, and the taxes thereon [1363—1033] were paid by William J. White for said year; that said tract of land was assessed to William J. White for the year 1907, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to William J. White for the year 1908, and the taxes thereon were paid by William J. White for said year; that said land was assessed to William J. White for the year 1909, and the taxes thereon were paid by Elizabeth White for said year; and that said tract of land was assessed to Elizabeth White for the year 1910.

. That the tract of land entered by Elizabeth White was assessed to Elizabeth White in 1905, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to Elizabeth White in 1906, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to Elizabeth White in 1907, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to Elizabeth in 1908, and

the taxes thereon were paid by Elizabeth White for said year; that said land was assessed to Elizabeth White in 1909, and the taxes thereon were paid by Elizabeth White for said year; and that said tract of land was assessed to Elizabeth White for the year 1910.

That the tract of land entered by Mamie P. White was assessed to Mamie P. White in 1905, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to Mamie P. White for the year 1906, and the taxes thereon were paid by W. J. White for said year; that said tract of land was assessed to Mamie P. White for the year 1907, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed for the year 1908 to Mamie P. White, and the taxes thereon were paid by Mamie P. White for said year; that said tract of [1364—1034] land was assessed to Mamie P. White for the year 1909, and the taxes thereon were paid by Elizabeth White for said year; and that said tract of land was assessed to Elizabeth White for the year 1910.

That the tract of land entered by Martha E. Hallett was assessed to her for the years 1905, 1906, 1907, 1908, 1909, and 1910, but no taxes were paid by her, on account of widow's exemption.

That the tract of land entered by Daniel W. Greenburg was assessed to Daniel W. Greenburg for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for

the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by David S. Bingham was assessed to David S. Bingham for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that the said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for the year 1906; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said land was assessed to the Idaho Trust Company in the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Idaho Trust [1365—1035] Company for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by William McMil-

lan was assessed to William McMillan for the year 1905, and the taxes thereon were paid by the Lewiston Abstract Company for said year; that said tract of land was assessed to William McMillan for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to William McMillan for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1908, and the taxes thereon were paid by Kittie E. Dwyer for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; that said land was assessed to Kittie E. Dwyer for the year 1910.

That the land entered by Hattie Rowland was assessed to Hattie Rowland for the year 1905, and the taxes thereon were paid by the Lewiston Abstract Company for said year; that said tract of land was assessed to Hattie Rowland for the year 1906, and the taxes thereon were paid by Kittie E. Dwyer for said year; that the said tract of land was assessed to Hattie Rowland for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1908, and the taxes thereon were paid by Kittie E. Dwyer for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract was assessed to Kittie E. Dwyer for

the year 1910. [1366—1036]

That the tract of land entered by Edgar H. Dammarell was assessed to Edgar H. Dammarell in the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that the south half was assessed to the Clearwater Timber Company for the year 1906, and the taxes thereon were paid by the Clearwater Timber Company for said year; that the remainder of the land embraced in said entry was assessed to the North Fork Lumber Company in 1906, and the taxes thereon were paid by D. Cameron for said year; that the south half of said tract was assessed to the Clearwater Timber Company for the year 1907, and the taxes thereon were paid by the Clearwater Timber Company for said year; that the remainder of the land embraced in said entry was assessed to the North Fork Lumber Company for the year 1907, and the taxes thereon were paid by the North Fork Lumber Company for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that the south half of said tract of land was assessed to the Clearwater Timber Company for the year 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; that the remainder of said entry was assessed to the North Fork Lumber Company for the year 1909, and the taxes thereon were paid by D. Cameron for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by William Helken-

berg was assessed to William Helkenberg for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach in 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach in 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company in 1908, and the taxes thereon were paid by the Clearwater Timber Company for [1367—1037] said year; that said land was assessed to the Idaho Trust Company for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by William Haevernick was assessed to William Haevernick for the year 1905, and the taxes thereon were paid by F. W. Kettenbach for said year; that said tract of land was assessed to F. W. Kettenbach for the year 1907, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1908, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; and that said tract of land was

assessed to the Clearwater Timber Company for the year 1910.

That the tract of land entered by Alma Haevernicks was assessed to F. W. Kettenbach for the year 1907, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1908, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1910.

That the land embraced in the entry of Geary Van Artsdalen was assessed to Geary Van Artsdalen in 1905, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said [1368—1038] tract of land was assessed to the Clearwater Timber Company in 1907, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1908, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; and that said tract of land was assessed to the Clearwater Timber Company for the year 1910.

That the tract of land embraced in the entry of Robert O. Waldman was assessed to Clarence W. Robnett in 1907, and the taxes thereon were paid by the Clearwater Timber Company for said year; that the said tract of land was assessed to the Lewiston National Bank in 1908, and the taxes thereon were paid by the Lewiston National Bank for said year; that the said tract of land was assessed to the Lewiston National Bank for the year 1909, and the taxes thereon were paid by the Lewiston National Bank for said year; and that said tract of land was assessed to the Idaho Trust Company in the year 1910.

That the tract of land entered by Charles E. Loney was assessed to Charles E. Loney in the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that the said tract of land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by Mary A. Loney was assessed to Mary A. Loney for the year 1907, and the taxes thereon were paid by [1369—1039] Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for

the year 1909, and the taxes thereon were paid by Kester and Kettenbach for the said year; and that said land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by Frank J. Bonney was assessed to Frank J. Bonney for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that the said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that the said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and the said tract of land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by James T. Jolly was assessed to James T. Jolley in 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that the said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for the said year; and that said tract of land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by Effie A. Jolly was assessed to Effie A. Jolley for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was as-

sessed to Kester and Kettenbach for the year 1908, and the taxes [1370—1040] thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and the said tract of land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by Charles S. Myers was assessed to Charles S. Myers in 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Charles S. Myers for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach in the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Jannie Myers was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach in the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Clinton E. Perkins was assessed to Clinton E. Perkins in 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that the tract of land above mentioned was assessed to Kester and Kettenbach in 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that the said tract of land was assessed to Kester and Kettenbach in 1909, and [1371—1041] the taxes thereon were paid by Kester and Kettenbach for said year; and that the said tract of land was assessed to Kester and Kettenbach for the year 1910. [1372—1042]

[Stipulation as to Surveys.]

Mr. GORDON.—It is further stipulated by and between the parties hereto in open court that the township lines of township 36 north of range 5 east, Boise meridian, were surveyed July 29, 1883; that the subdivision lines were surveyed July 30th to August 9th, 1883; that the plat of said surveys was received at the land office at Lewiston, Idaho, August 28th, 1884; that the plat was filed in said office on October 22, 1884; that the state filed its selection in said township October 27, 1893, and that said selection was approved by the Commissioner of the general land office, November 19, 1896.

It is further stipulated by and between the parties hereto in open court that the township lines of township 37 north of range 5 east, Boise meridian, were surveyed June 20th to July 1st, 1900; that the subdivision lines of said township were surveyed July 2d to July 31st, 1900; that the standard lines of said

township were surveyed July 8th to July 26th, 1900; another standard surveyed July 15th to July 17th, 1883; that the plat of said township was received at the Lewiston land office February 24th, 1902, and filed in said office April 17th, 1902.

It is further stipulated by and between the parties hereto in open court that the township lines of township 38 north of range 5 east, Boise meridian, were surveyed June 15th to June 17th, 1902; that the subdivision lines of said township were surveyed June 18th to July 11th, 1902; that the parallel line of said township was surveyed September 15th to September 18th, 1901; that the connection lines of said township were surveyed June 17th to July 11th, 1902; that the south and west boundary lines of said township were surveyed June 29th to August 21st, 1900; that the plat of said survey was received at the Lewiston land office January 22d, 1904, and filed in said office February 24th, 1904.

It is further stipulated by and between the parties hereto in open court that the east township lines of township 38 north of range [1373—1043] 2 east, Boise meridian, were surveyed June 25th to June 28th, 1900; that the subdivision lines of said township were surveyed June 29th to August 10th, 1900; that the meander lines of the survey of said township were surveyed July 8th to August 6th, 1900; that the connection lines of the survey of said township were surveyed June 28th to August 10th, 1900; that the west boundary line of the survey of said township was surveyed June 31 to August 9, 1900; that the west boundary line of the survey of said

township was surveyed July 8th and 9th, 1893; that the survey of the standard parallel line of said township was surveyed June 2d to June 5th, 1893; that the south boundary of said township was surveyed August 4th and 5th, 1898; that the plat of said survey was received at the Lewiston land office February 24th, 1902, and filed in said office April 10th, 1902.

It is further stipulated by and between the parties hereto in open court that the township lines of township 39 north, range 5 east, Boise meridian, were surveyed July 12th to July 20th, 1902; that the subdivision lines of said township were surveyed July 20th to August 11th, 1902; that the connection lines of said township were surveyed July 14th to July 20th, 1902; that the standard parallel lines of said township were surveyed September 15th to 17th, 1901; and that the plat of said survey was received at the Lewiston land office January 22d, 1904, and filed in said office February 24th, 1904.

It is further stipulated by and between the parties hereto in open court that the township lines of township 38 north, range 6 east, Boise meridian, were surveyed June 15th to June 19th, 1902; that the subdivision lines of said township were surveyed June 20th to July 13th, 1902; that the connection lines of said township were surveyed June 17th to July 13th, 1902; that the standard parallel lines of said township were surveyed September 18th and 19th, 1901; and that the plat of the survey of said township was received at the Lewiston land office January 22d,

1904, and filed in said office February 24th, [1374—1044] 1904.

It is further stipulated by and between the parties hereto, in open court, that the east and south township lines of township 39 north, range 3 east, Boise meridian, were surveyed August 18th to 26th, 1896; that the subdivision lines of said township were surveyed August 26th to September 18th, 1896; that the meander lines of said township were surveyed September 24th, 1896; that the north boundary line of said township was surveyed July 5th to July 8th, 1895; that the west boundary line of said township was surveyed September 14th to September 18th, 1893; and that the plat of said survey was received at the Lewiston land office December 9th, 1897, and filed in said office January 19th, 1898.

It is further stipulated by and between the parties hereto, in open court, that the township lines of township 40 north, range 3 east, Boise meridian, were surveyed July 3d to July 8th, 1895; that the subdivision lines of said township were surveyed August 5th to August 22d, 1895; that the connection lines of said township were surveyed July 3d to August 22d, 1895; that the west boundary line of said township was surveyed June 29th to July 1st, 1895; that the standard parallel lines of said township were surveyed July 19th to July 21st, 1895; and that the plat of said survey was received at the Lewiston land office December 14th, 1896, and filed in said office February 13th, 1897.

It is further stipulated by and between counsel, in open court, that the township lines of township

40 north, range 4 east, Boise meridian, were surveyed September 23d to 27th, 1896; that the subdivision lines of said township were surveyed September 27th to October 26th, 1896; that the meander lines of said township were surveyed October 28th to November 1st, 1896; that the connection lines of said township were surveyed September 23d to October 26th, 1896; that the standard parallel lines of said township were surveyed [1375—1045] September 19th to September 22d, 1896; that the north boundary line of said township was surveyed July 3d and 4th, 1895; and that the plat of said survey was received at the Lewiston land office June 3d, 1898, and filed in said office September 1st, 1898.

It is further stipulated by and between the parties hereto, in open court, that the township lines of township 40 north, range 1 west, were surveyed June 30th, 1891, and June 8th, 1892; that the subdivision lines of said township were surveyed July 8th, 1891, and June 4th, 1892; and that the plat of a portion of said survey was received at the Lewiston land office November 19th, 1892, and of the remainder of the township October 25th, 1900, and filed in said office December 5th, 1900.

It is further stipulated by and between the parties hereto, in open court, that the north and west boundary lines of the survey of township 42 north, range 1 west, Boise meridian, were surveyed October 27th, 1897; that the subdivision lines of said township were surveyed October 28th, 1897, and May 25th, 1898; that the south boundary line of said township was surveyed July 1st and 2d, 1896; that

the Boise meridian was surveyed May 27th to 29th, 1883; and that the plat of the survey of said township was received at the Lewiston land office August 25th, 1898, and filed in said office October 5th, 1898.

It is further stipulated by and between the parties hereto, in open court, that the north and west township lines of township 37 north, range 2 east, Boise meridian, were surveyed August 1st to 5th, 1898; that the subdivision lines of said township were surveyed August 9th to August 27th, 1898; that the meander lines of said township were surveyed August 27th and 28th, 1898; that the connection lines of said township were surveyed August 1st to 26th, 1898; that the east boundary line of said township was surveyed [1376—1046] August 5th to August 8th, 1898; that the standard parallel lines of said township were surveyed July 24th to 25th, and August 17th, 1883; and resurveyed July 24th to 28th, 1870; and that the plat of said survey was received at the Lewiston land office March 23d, 1900, and filed in said office April 25th, 1900.

It is further stipulated by and between the parties hereto, in open court, that the subdivision lines of township 39 north, range 2 east, Boise meridian, were surveyed September 22d to 29th, 1893; that the standard parallel lines of said township were surveyed June 2d to June 5th, 1893; and that the plat of the said survey was filed in the Lewiston land office July 2d, 1894.

It is further stipulated by and between the parties hereto, in open court, that the township lines of

township 33 north, range 5 east, Boise meridian, were surveyed June 22d and 23d, 1880; that the subdivision lines of said township were surveyed June 25th to July 3d, 1880; and that the plat of said survey was received and filed in the Lewiston land office October 28th, 1880.

It is further stipulated by and between the parties hereto, in open court, that the north, east, and west township lines of township 39 north, range 6 east, Boise meridian, were surveyed July 13th to July 19th, 1902; that the subdivision lines of said township were surveyed July 20th to August 11th, 1902; that the standard parallel lines of said township were surveyed September 18th and 19th, 1901; and that the plat of said survey was received at the Lewiston land office January 22d, 1904, and filed in said office February 24th, 1904.

It is further stipulated by and between the parties hereto, in open court, that the south and east township lines of township 40 north, range 5 east, were surveyed July 19th to August 13th, 1902; that the subdivision lines of said township were surveyed August 14th to September 15th, 1902; that the meander lines of said township [1377—1047] were surveyed September 5th and 6th, 1902; that the connection lines of said township were surveyed August 13th to September 5th, 1902; that the standard parallel lines of said township were surveyed September 20th to September 30th, 1901; that the west boundary line of said township was surveyed September 22d to September 24th, 1896; and that the plat of said survey was received at the Lewis-

(Testimony of Miss Elizabeth Kettenbach.)
ton land office January 22d, 1904, and filed in said
office February 24th, 1904.

Mr. TANNAHILL.—The defendants severally object to the evidence, upon the ground that it is incompetent, irrelevant and immaterial, but waive any further identification of the evidence of the documents. [1378—1048]

[**Testimony of Miss Elizabeth Kettenbach, for
Complainant.**]

Miss ELIZABETH KETTENBACH, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Miss Elizabeth Kettenbach?

A. Yes, sir.

Q. Where do you reside, Miss Kettenbach?

A. In Lewiston at present.

Q. And you have resided here for a number of years? A. Yes, sir, nearly eight.

Q. Are you related to the defendant William F. Kettenbach? A. I am his aunt.

Q. And are you related to Mr. Frank A. Kettenbach? A. He is my brother.

Q. Miss Kettenbach, do you remember making an entry upon a timber and stone claim in April, 1904?

A. I do.

Mr. TANNAHILL.—The defendants severally object to the introduction of any evidence of this witness in support of bills No. 388 and 407, upon the ground that the entry of the witness is not involved

(Testimony of Miss Elizabeth Kettenbach.)

in either of these actions, and her evidence in relation thereto is irrelevant, incompetent and immaterial.

Mr. GORDON.—Q. You answered “I do,” did you? A. Yes, sir.

Q. I show you timber and stone lands sworn statement of Elizabeth Kettenbach, dated April 25th, 1904, and ask you if you signed that paper and filed the same in the land office about the date it bears?

A. Yes, sir.

Q. I show you the nonmineral affidavit of the same date, and ask you if you signed that paper and filed it in the land office?

A. Yes, sir. [1379—1049]

Q. I show you the testimony of Elizabeth Kettenbach, given at the final proof, July 14th, 1904, and ask you if you signed that paper? A. I did.

Q. I show you the cross-examination of Elizabeth Kettenbach, taken at the same time, and ask you if you signed that? A. Yes, I did.

Q. Miss Kettenbach, do you remember who first spoke with you about taking up a claim under the timber act?

A. No, I don't. I remember the party going up there—planning to go—and I was very anxious to take up a claim, and I think I suggested going myself.

Q. And with whom did you go to view those claims?

A. With Mr. Kester and his wife, and Mr. and Mrs. White, and Mrs. Hallett and myself.

(Testimony of Miss Elizabeth Kettenbach.)

Q. Mrs. Hallett—were in the party.

Q. Now, do you know who made the arrangements for the party to go?

A. Why. I think Mr. Kester made the arrangements.

Q. That is George H. Kester you speak of?

A. Yes, George H. Kester, because I remember of paying him my part of the cost of the trip.

Q. Do you remember how much that was?

WITNESS (to Mr. COX).—Why, I think, Mr. Cox, you have that receipt that I got from Mr. Kester. Have you got it with you—the receipt showing the cost of the trip?

The SPECIAL EXAMINER.—Miss Kettenbach might refresh her memory from the receipt, I suppose.

Mr. GORDON.—Oh, sure.

WITNESS.—Yes. I don't remember exactly the figures, but I remember looking it up. (Mr. Cox handed a document to the witness.) Yes. It was—let's see, this is the little one that you had—oh, no. Yes, my share was \$22.25. [1380—1050]

Mr. GORDON.—Q. May I look at that please?

A. Yes, that is the amount. (The witness handed said document to Mr. Gordon, who examined the same.)

Q. Now, do you remember when you received this paper?

A. Why, it was just a short time after we returned from our trip up there; I can't tell just exactly when, but I remember paying him. It was just a little

(Testimony of Miss Elizabeth Kettenbach.)

while after we had taken the trip.

Q. Now, you went to this land in the fall before you filed, did you not? A. Yes, in October.

Q. Now, do you remember why you didn't file immediately after you had viewed the land?

A. No, I don't know why.

Q. Do you remember who advised you of the time to make your filing?

A. I couldn't tell exactly who advised me at the time, but I suppose—I wouldn't say positively who it was; it might have been some member of our party told me, but I couldn't say positively.

Q. Mr. Kester was in charge of the party, was he not?

A. Yes, he was in charge; that is, in a way. Of course, Mr. White was along, and they managed together. I don't remember really who told me about the time of the filing, but I suppose I was told at the time.

Q. Now, do you remember who prepared this sworn statement that I showed you?

A. Who prepared it?

Q. Yes. A. In the land office?

Q. Well, was it prepared in the land office?

A. Well, I don't know. I think I signed the statement in the land office—I believe I did. [1381—1051]

Q. But wasn't that paper prepared for you and you took it to the land office with you to make your application? A. Well, I don't remember.

(Testimony of Miss Elizabeth Kettenbach.)

Q. You have no recollection of where you received the paper?

A. No, I haven't. I was kind of under the impression that it was there, but I am not sure.

Q. Do you remember whether you had a description of the property and took it to some lawyer to prepare it for you, or was that attended to for you by some member of the party, or by someone else?

A. I don't remember of going to any lawyer.

Q. Do you remember of being in Mr. I. N. Smith's office?

A. Yes, I remember being in his office, but I couldn't say whether Mr. I. N. Smith filled out the papers or not; I couldn't say positively. I hadn't been here long enough to know the different—

Q. Do you remember of paying a fee for that service? A. Yes, I think there was a fee.

Q. Now, to whom did you pay that?

A. I don't remember who I paid it to; but I am quite sure there was a fee at the time.

Q. Do you remember how much the fee was that you paid?

A. It seems to me it was \$8.00 or something.

Q. No. Aren't you thinking of the fee which you paid in the land office for the filing?

A. Yes. I thought that was what you had reference to.

Q. No; I mean the fee you paid for preparing the papers? A. Oh, no; I don't remember that.

Q. Then, you did pay a fee of something like \$8.00 in the land office?

(Testimony of Miss Elizabeth Kettenbach.)

A. I think it was. I don't think it was more than that—whatever was customary.

Q. Now, did someone pay that and you settled afterwards? [1382—1052]

A. No; I paid that myself.

Q. Do you remember how long before you filed that paper you had to remain at the land office—your sworn statement?

A. Do you mean that day, how long I was there?

Q. Yes.

A. No, I couldn't say; I don't remember.

Q. You were not there all night?

A. Oh, no. No, I wasn't there all night at any time.

Q. Now, do you remember whether or not there was a large crowd at the land office that day?

A. Why, yes; there was quite a long line of people back of me and some in front of me.

Q. And do you remember whether or not the rest of the party that you went on this excursion to the timber with, were at the land office the same time you were when you made your initial filing?

A. Why, yes; I remember some of them being there. I don't know whether they were all there upon that day.

Q. Have you any distinct recollection of the time of day that you arrived at the land office when you made your filing?

A. Why, it was in the morning some time; I don't know exactly how early.

Q. And did you form in the line?

(Testimony of Miss Elizabeth Kettenbach.)

A. I did; I stood in line.

Q. And do you remember when you went to the line whether or not you took the place of somebody else in the line?

A. No, I don't remember. I was there. I don't remember of taking anyone else's place.

Q. Did you form at the end of the line, or did you get up in the middle of the line somewhere?

A. Well, I think when I got there I must have been at the end. Mrs. White and I, I remember, were together, but I don't remember of—there were quite a good many ahead of us; in fact, I don't really remember [1383—1053] whether—but I think that we must have taken our places—

Q. How is that?

A. I think we must have taken our places at the end of the line. I am not positive, though, about that; but I know there were quite a number ahead of us.

Q. But you didn't go to the land office until the morning that you made your filing?

A. No, I don't think I did. No, I didn't go until the morning I made my filing, but I wouldn't say positively, I might have been up to the land office before.

Q. Well, I don't mean if you were there at any other occasion; I mean you didn't remain there?

A. Oh, remain? No, I didn't remain there.

Q. The reason I asked you that, Miss Kettenbach, is because I understand that line formed there some time between a week and ten days before the land

(Testimony of Miss Elizabeth Kettenbach.)

office opened, and I was trying to find out—

A. No, I wasn't there. I came up there the morning of the filing.

Q. You paid no one a fee for holding your place in line for you? A. No, I didn't.

Q. Had you ever talked with Mr. Will. Kettenbach or Mr. Frank Kettenbach about the propriety of taking up a timber claim?

A. Why, they knew that I would like to take one up, just as a great many other people took up timber claims; they knew I wanted to; that it was my desire to do so.

Q. And did they arrange for a locator for you?

A. Why, Mr. Frank Kettenbach had nothing to do with it at all, and it might have been that Will. suggested Mr. Dwyer, because he was our locator.

Q. You didn't arrange for him to go over the land with you; someone else arranged that for you, did they? [1384—1054]

A. Mr. Kester had charge of the party, and he made all those arrangements.

Q. Now, before you went to the timber did you know what the location fee would be? A. I did.

Q. How much was it? A. \$100.00.

Q. Now, to whom did you pay that?

A. Mr. Dwyer.

Q. And when?

A. I paid it to him the day that we filed, I think, or when we proved up, I should say—the day we proved up.

Q. The day you made your final proof?

(Testimony of Miss Elizabeth Kettenbach.)

A. Yes, the day we made our final proof; not the day we filed.

Q. And he was there to get it—you didn't have to go and look him up?

A. Well, I don't remember whether he was right there to get it or not; but I remember paying it to him.

Q. Do you remember where it was you paid him?

A. No, I don't. It wasn't up in the land office, though, I remember that. It might have been down stairs or some place near there where I just happened to see him.

Q. Do you remember whether or not it was in the Directors' room of the bank? A. It was not.

Q. Do you remember whether it was in the bank?

A. No, I think not. I think it was in the hallway coming downstairs that he was at the foot of the stairs, but I wouldn't say positively.

Q. And did you pay him by check or in cash?

A. Cash. [1385—1055]

Q. Now, Miss Kettenbach, referring to the time that you made your final proof, do you remember how much you paid into the land office that day?

Mr. TANNAHILL.—The defendants severally object to any evidence in regard to the final proof, on the ground that it is irrelevant, incompetent and immaterial, and ask that this objection go to all the questions in relation to the final proof, without the necessity of repeating it.

Mr. GORDON.—Answer the question, please.

A. Well, I didn't quite understand that.

(Testimony of Miss Elizabeth Kettenbach.)

Q. Well, he was just making an objection.

A. Oh, I see. And what was the amount, you asked?

Q. Yes.

A. Well, four hundred and some dollars; I don't remember exactly.

Q. Do you remember whether you paid that by check or in cash? A. In cash.

Q. And do you mind telling where you received the money that was paid that day?

A. Well, I would like to make a little explanation there. The money that I intended to use in filing—in paying for this claim, was money that I inherited from my mother's estate, and I expected a certain note to be paid off at a certain time, but it wasn't, so temporarily I borrowed the money from my nephew, in whose family I was living; and so—

Q. That is William F. Kettenbach, is it?

A. Yes—I was a member of his family; and naturally when the time came and my note wasn't paid off, I asked him for a loan of five hundred and some dollars to pay this, and then as soon as my note was paid in I paid off the money, and I have the return checks and my bank statement—Mr. Cox has all those—to show just exactly what my bank account was at the time; and so just temporarily I borrowed the money, [1386—1056] and I didn't make any explanation to them at the time that I paid it, because it was really I felt money that I inherited that I wanted to use towards getting this claim, and simply because it hadn't been paid at the time it

(Testimony of Miss Elizabeth Kettenbach.)

should have been I borrowed this money for a few months from my nephew until the money was paid into the Idaho Trust Company, and then I gave him a check for it, for the full amount that I had borrowed.

Q. Then, as I understand you, this nephew you speak of is William F. Kettenbach? A. Yes, sir.

Q. And I understood you to say that you were living at his house at that time?

A. I was living as a member of his household at the time.

Q. And how long had you lived in his home?

A. Why, I came out the year before, and I had been living with him, I think,—well, I came out in February, and it was the next—a year from the next July, you know, that I proved up; it was the following April—or, in October, that I went up to the timber.

A. And you had been living at his home then about 18 months at the time you made proof?

A. Yes, I think so.

Q. And how long after that did you continue to live at his home?

A. Why, I think I was there possibly another 18 months before I finally left the home there.

Q. And the day that you made your proof you received this loan you speak of from William F. Kettenbach? A. Yes; he loaned me the money.

Q. And do you remember getting it at the bank?

A. I did; I got it at the bank.

Q. And went directly from the bank to the land

(Testimony of Miss Elizabeth Kettenbach.)

office? A. Yes. [1387—1057]

Q. And paid the money in?

A. Yes, I paid the money.

Q. Now, do you remember whether you discussed with Mr. Kettenbach at that time as to any questions that would be asked you at the land office?

A. Well, I don't remember. We probably might have discussed it, but I don't remember just what it was now. We naturally would discuss anything of that kind.

Q. Do you remember whether he had a set of the questions that would be asked you when you went to the land office?

A. No, I don't. I don't remember that.

Q. You remember when you went to the land office they asked you where you had received the money?

A. Yes, I remember that.

Q. Which you were paying into the land office?

A. Yes, sir.

Q. And how long you had had the same in your actual possession? A. Yes, sir.

Q. And do you remember the answer that you made?

A. I think I told them I inherited the money, and that's what I made this explanation, because I felt justified in doing it. It was really just a temporary loan, and that I wanted to apply this money that I had inherited on this claim, and that is why I felt—

Q. Well, here is the question:—

Mr. COX.—Pardon me a moment. Is it under-

(Testimony of Miss Elizabeth Kettenbach.)

stood that Mr. Tannahill's objection runs to all these questions?

Mr. GORDON.—Oh, yes.

Q. "Question 17. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. From the sale of real estate. Six months." You remember making that answer, do you?

A. Yes, sir, I remember making that. [1388—1058]

Q. And the explanation you have given here is—

A. Yes, is the one that I wanted to make, and in fact should have made at the time; but I just thought then that I would have the money even in less time than it was paid in.

Q. Now, have you ever given anyone an option on your land? A. No, sir, I never have.

Q. Did you ever authorize anyone else to give an option on it? A. I did not.

Q. Or to try to sell it? A. Never.

Q. And you still hold the timber claim?

A. I still hold it, yes, sir.

Q. And do you hold any other timber claim except the one you filed upon?

A. No, sir. Mr. Cox has all my tax receipts there, showing that I paid the taxes on the claim.

Mr. GORDON (to Mr. COX).—Do you mind if I look at those papers which you showed me this morning?

Mr. Cox handed several papers to Mr. Gordon, who examined the same.

(Testimony of Miss Elizabeth Kettenbach.)

Mr. GORDON.—Q. Have you had an offer for your claim?

A. I never have had an offer for my claim.

Q. Mr. Dwyer gave you a receipt for the location fee, did he? A. Yes, sir.

Q. And do you remember whether he gave it to you the same day you paid him the location fee?

A. I am not sure of that, but I think it was the 14th of July.

Q. That's right; it is dated the 14th of July.

A. Well, I think that's right.

Q. Now, do you know in whose handwriting the body of that receipt is? [1389—1059]

A. No, sir, I couldn't tell.

Q. Haven't you ever seen that handwriting before? Do you know Mr. William F. Kettenbach's handwriting? A. Yes, I know his handwriting.

Q. This is the receipt that Mr. Dwyer gave you; is that correct? A. Yes, sir.

Q. And it was given you the date it bears?

A. Yes, I am quite sure it was, because I paid him, I suppose—I wouldn't say positively, but I think it must have been the day it is dated.

Q. Now, did you pay him yourself?

A. Yes, sir, I did.

Q. Or did you leave that to somebody else?

A. Oh, no. I paid Mr. Dwyer.

Q. And where has this receipt been all this time—in whose possession?

WITNESS.—Is that the one I gave you, Mr. Cox,—this one—this receipt?

(Testimony of Miss Elizabeth Kettenbach.)

Mr. COX.—Yes, I gave that to you?

Mr. GORDON.—Q. Now, do you remember when you gave it to Mr. Cox?

A. Why, I gave him a number of papers, looked up what I thought would be necessary, about the time of these suits being brought.

Q. You mean when the criminal actions were brought?

A. When I asked Mr. Cox to represent me.

Mr. GORDON.—Well, I don't know when that was.

Mr. COX.—Well, you have reference to the civil action?

WITNESS.—Yes.

Mr. GORDON.—Q. You don't remember exactly the date?

A. When were those cases brought? [1390—1060]

Q. A year ago yesterday, or about that time.

A. Well, I wouldn't say. I couldn't say positively, but it has been two years; I know that.

Q. And where did you get the receipt from, and the papers that you gave him?

A. I had them in my possession. They were my private papers.

Q. But I mean did you keep them in your own possession? A. In my own possession.

Q. Or did somebody else keep them for you?

A. Oh, no. My tax receipts and bank statements and everything that I think will be of use I have a certain place that I keep them in, and I looked over

(Testimony of Miss Elizabeth Kettenbach.)

what I thought would be necessary and turned them over to Mr. Cox.

Q. Miss Kettenbach, do your brothers address you as "Elizabeth"? A. No.

Q. What do they call you?

A. Well, "Lizzie" is what they call me, but I always went by that name, and that is the way all my letters were addressed until I became associated with the Normal School, and then I took my full name; but nearly every one wrote my name "Lizzie," and it was only the last few years, as I say, that I took my full name, but never before that. You will find in looking over the bank checks and all that that I used to sign them "Lizzie."

Mr. GORDON.—We offer in evidence the receipt identified by the witness and read the same into the record:

LEWISTON NATIONAL BANK.

Lewiston, Idaho, Jul. 14, 1904.

Received from Lizzie Kettenbach One Hundred Dollars For Location fee in Tp 38—5E.

\$100.00.

WILLIAM DWYER.

Q. You have no recollection whatever in whose handwriting the body of that receipt is? [1391—1061] A. No, I couldn't tell.

Q. Is it Mr. Frank Kettenbach's?

A. No. I am more familiar with Mr. Frank Kettenbach's handwriting than I am with Will. Kettenbach's.

Q. Is it Mr. Kester's?

A. I couldn't say. I don't know whose handwrit-

(Testimony of Miss Elizabeth Kettenbach.)

ing it is. I couldn't say. I remember of paying the location fee, but I couldn't tell whose writing it is.

Q. I show you a check drawn on the Idaho Trust Company November 12th, 1904, to the order of W. F. Kettenbach, for \$519.25, signed "Lizzie Kettenbach." A. Yes.

Q. And ask you if you signed that check?

A. I did.

Q. Now, who wrote the "W. F. Kettenbach" in there?

A. Why, I think my nephew wrote that—he must have—he probably did. I am not sure, but he must have.

Q. And that is his signature endorsed on the back of it, isn't it?

A. Yes; and that was the money that I had borrowed the day that I proved up.

Q. That was the exact amount—\$519.25?

A. Yes, sir.

Q. You didn't pay any interest at all, did you?

A. Interest for the three months?

Q. Yes.

A. I hardly think so. It would have been added to that. You can figure that out.

Q. Well, I want to know if you have any distinct recollection?

A. Well, I don't remember paying any interest, but if it was it was added to that. The full amount is four hundred and something. How much is it for a claim—four hundred and—? [1392—1062]

Q. \$400.00, I think.

(Testimony of Miss Elizabeth Kettenbach.)

A. Just an even \$400.00? There might be interest added to that.

Q. An even four hundred.

A. Well, then, the other hundred would be five hundred, and what is the amount?

Q. \$19.25?

A. \$19.25—well, then, there was some—

Q. Advertising fees?

A. Perhaps something of that kind, and there might be a little interest there; I am not sure.

Q. Well, do you remember whether the \$22.00 expense that you had on going to the timber was included in this?

A. No. I paid Mr. Kester myself right soon after we came back, and that was the October—oh, that was, I think, over a year before.

Q. Before this was?

A. Well, no, not quite; it was the following July, and I went up in October, you know, of the year before; and I paid him soon after I returned from there. As soon as I found out what it was I drew the money from the Idaho Trust and paid it to Mr. Kester.

Q. You didn't give Mr. Kettenbach a note in evidence of the money he loaned you that day?

A. No, I didn't give him my note.

Q. Now, you had some income, did you not, Miss Kettenbach? A. Oh, yes, I had.

Q. And I understand you would loan that money at times? A. Yes. Yes.

Q. And did you loan that through your nephew?

(Testimony of Miss Elizabeth Kettenbach.)

A. No. My brother had charge of my affairs.

Q. Your brother Frank?

A. Yes, in the Idaho Trust; it was handled there, and they made the loans from there, and he looked after my business. [1393—1063]

Mr. GORDON.—We offer in evidence the check that has been shown the witness, and dated November 12th, 1904, and signed “Lizzie Kettenbach,” which was identified by the witness.

Said check was marked Exhibit 41 by the Reporter.

Mr. GORDON.—We also offer in evidence the receipt that has been read into the record.

Said receipt was marked Exhibit 42 by the Reporter.

Mr. GORDON.—Q. At the time you made your proof your nephew (Mr. William F. Kettenbach) was President of the Lewiston National Bank, was he not? A. Yes.

Q. And your brother Frank W. Kettenbach was at the same time the President of the Idaho Trust Company? A. Yes, the Idaho Trust Company.

Q. Do you remember whether or not your claim was held up for some time, and that there was some trouble about getting the patent?

A. Yes, it was, just as all the others were, I think.

Q. And was any effort made by you or your attorney to hurry the issuance of the patent?

A. Well, I think there was a letter written there in regard to it, to Washington, and I think we received an answer.

Q. Do you remember who wrote the letter for you?

(Testimony of Miss Elizabeth Kettenbach.)

A. No, I don't. My brother Frank looked after it for me, but I don't remember who wrote the letter.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Elizabeth Kettenbach, dated April 25th, 1904, the nonmineral affidavit, the notice for publication, dated April 25th, 1904, the testimony of Elizabeth Kettenbach given at final proof, the cross-examination of Elizabeth Kettenbach given at the same time, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the [1394—1064] receiver's receipt and the register's certificate, dated July 14th, 1904, a certified copy of the patent issued December 31st, 1904, to Elizabeth Kettenbach, all relating to the entry of the west half of the northeast quarter and the west half of the southeast quarter of section 13, in township 38 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the papers in evidence in support of bills or actions No. 388 or 407, upon the ground and for the reason that the entry of the witness is not involved in either of these actions, and said papers are irrelevant and immaterial. And the defendants further severally object to the admission in evidence of any of the final proof papers, especially the testimony of claimant on final proof, and the cross-examination of claimant on final proof, the testimony of the witness Edwin Bliss on final proof, and the cross-examination of the wit-

(Testimony of Miss Elizabeth Kettenbach.)

ness Edwin Bliss on final proof, the testimony of the witness William Dwyer on final proof, and the cross-examination of the witness William Dwyer on final proof, and the proof of publication, upon the ground that they are matters relating to the final proof, occurring long after the filing of the sworn statement, and they are irrelevant and immaterial.

Said papers were thereupon marked by the Reporter as Exhibits 43, 43A, 43B, 43C, 43D, 43E, 43F, 43G, 43H, 43I, 43J, 43K, 43L, and 43M.

Cross-examination.

(By Mr. COX.)

Q. You came to Lewiston, Idaho, to live, in 1903?

A. Yes.

Q. Where was your home prior to coming to Lewiston? A. Indianapolis, Indiana.

Q. Where have you resided since 1903, in what city? A. Lewiston, Idaho. [1395—1065]

Q. Have you had some occupation here, Miss Kettenbach?

A. Yes; I was Librarian of the Lewiston State Normal School, and have been for six years.

Q. You have that position now, have you?

A. Yes, I have the position now.

Q. Did you have that position in 1904?

A. Yes; I think I took the position in January, 1904. I will have to stop to think. It is six years this last January. That would make it right, wouldn't it? 1904—yes; I was elected in January, 1904.

Q. Had your mother died prior to your coming to

(Testimony of Miss Elizabeth Kettenbach.)

Lewiston, Miss Kettenbach? A. Yes, she had.

Q. Did you inherit some property or estate from your mother? A. Yes, I did.

Q. What was the character of the property belonging to that estate?

A. Why, it was real estate at the time of her death; it was sold and converted into cash.

Q. And was it the proceeds of the sale of this real property which you had at the time that you came to Idaho? A. Yes.

Q. Through what institution was that money invested for you, Miss Kettenbach?

A. The Idaho Trust.

Q. Did you have this money or a part of it invested through the Idaho Trust Company during the year 1904? A. I did.

Q. Do you remember any of the people to whom the money was loaned at that time?

A. Yes; I remember that the McGranes had some, and I think Billups was one, and I think there was another small note, but I don't [1396—1066] just remember who had that.

Q. Did you have any money loaned to C. A. House?

A. Yes; I think that is the one that I couldn't remember.

Q. Approximately what was the aggregate amount that you had invested in loans at that time?

A. Why, I think it was between \$4,000.00 and \$4,500.00, I am not just sure of the amount, possibly \$4,300.00. I think that was about the right amount

(Testimony of Miss Elizabeth Kettenbach.)
at that time.

Q. Do you remember whether any of these loans were past due in July, 1904?

A. Why, I think it was either one of the loans or the interest on one of the loans that I was expecting at the time that I proved up, and it wasn't paid until later.

Q. In July, 1904, how long had you been in possession of your part of the proceeds of your mother's estate?

A. Why, about—oh, I think possibly two or three years. I am not quite sure of that. I stayed back east a while after my mother's death. I don't remember exactly, but not so very long—possibly two or three years.

Q. What is the amount of your salary, Miss Kettenbach? A. \$60.00 a month.

Q. Do you remember whether it was more or less than that in 1904?

A. I think it was only \$50.00 to begin with, I think it was, but I am not just sure; it was raised to \$60.00 later on, but I am not positive whether it was in 1904 or 1905. I can tell, though; I can refer to my bank statements. You can tell there what the salary warrants that I deposited were.

Q. At the time when you went to visit the land upon which you subsequently filed, did you pay your own expenses in connection with that business?

A. Do you mean pay for them? [1397—1067]

Q. When you went up to inspect the land?

A. Yes; I settled with Mr. Kester after we came

(Testimony of Miss Elizabeth Kettenbach.)

back. He divided up the expenses, and I paid him personally.

Q. Will you examine the paper which I hand you and state whether that is a receipt—

A. Yes.

Q. —for your part of the expenses?

A. Yes, this is the receipt. I looked over it carefully, and this is the only receipt I had for the expenses, and that is correct.

Q. Did you pay the amount for which this receipt was given?

A. Yes; I paid him in cash. I remember of drawing out the money at the Idaho Trust and taking it over to Mr. Kester and paying him.

Mr. COX.—Will you mark this for identification, please?

Said receipt was thereupon marked by the Reporter as “Defendants’ Exhibit ‘K,’ for identification.”

Q. Do you remember what time you went to inspect this land, Miss Kettenbach?

A. Yes; it was in October, I think about the 6th of October that we left here, and we were gone just one week.

Q. In what year? A. In October.

Q. Was it the October before you filed?

A. Yes; it was in 1903, I think.

Mr. GORDON.—May I inquire: Are you going to offer that receipt?

Mr. COX.—Yes, sir.

WITNESS.—Yes, I think it was October, 1903;

(Testimony of Miss Elizabeth Kettenbach.)

it must have been, because it was the fall before we filed.

Mr. COX.—Q. You paid your location fee, your filing expenses, and the amount required upon final proof, did you, Miss Kettenbach? [1398—1068]

A. Yes, I paid the filing expenses myself; that is not included in this money—that \$500.00—I paid the filing expenses at the time I filed; and then the final proof, why that was the money that I borrowed from Will.

Q. Who has paid the taxes on this land?

A. Why, I did once or twice, but after that it was paid from either the Idaho Trust or the Lewiston National Bank, and after the consolidation my brother looked after that for me.

Q. With whose money have the taxes been paid, Miss Kettenbach?

A. With my own money. It was always charged up to me in my account.

Q. Well, just what do you mean by saying it was paid from the Idaho Trust Company or the Lewiston National Bank?

A. Well, I had my money on deposit there, of course, and the money that I had was on deposit there, and it was paid—I would draw a check, you know, and it was always paid, and then charged up to me.

Q. Who looks after your taxes for you, Miss Kettenbach?

A. Why, through the bank, or who has charge of it there. My brother, I guess (Frank). looks after

(Testimony of Miss Elizabeth Kettenbach.)

it, in a way, but I don't know exactly who goes up and pays the taxes. I always get my receipts; they are usually included in my statements when they are returned—the bank statements.

Q. Your taxes are paid for you by the bank, as I understand it? A. Yes.

Q. And a memorandum check is drawn against your funds? A. Yes.

Q. For the payment of the taxes?

A. Yes. I imagine that is the way it is done, because I always have my receipts and have always taken care of them myself. First I paid them myself—I would go to the courthouse and pay them—but the last two or three times why it has been done for me. [1399—1069]

Q. Have all the taxes assessed on the land since it became assessable been paid? A. Yes. Yes.

Q. Have all of those taxes been paid with your money? A. Yes, sir.

Q. Prior to the time when you made final proof, Miss Kettenbach, did you have any agreement or understanding, direct or indirect, with William F. Kettenbach, or George H. Kester, or William Dwyer, or all of them or any of them, or with anyone else whatsoever, for the sale of this land, or any interest in it? A. No, sir, I never did.

Q. Have you ever had any agreement or understanding with any of them for a sale of the property? A. No, sir.

Q. Or any interest in it? A. No, sir.

Q. Are you now the owner of this land, and of

(Testimony of Miss Elizabeth Kettenbach.)

every part thereof, and of every interest therein?

A. I am.

Q. I will ask you to examine this document, being a letter upon stationery of the Department of the Interior, signed "Fred. Dennett, Commissioner," and state whether that is a letter which was received by you.

A. Yes, this is one that I received.

Mr. COX.—I will ask to have that marked for identification.

Said letter was thereupon marked by the Reporter as "Defendants' Exhibit 'L,' for identification."

Q. Do you know where your tax receipt for the year 1909 is?

A. Why, it may be that I still have that up in my—among my papers.

Q. You have paid the taxes on this land for that year? [1400—1070]

A. Yes, it is paid, but I must have mislaid it, or at least I could not find it when I was looking for these.

Q. The taxes for the year 1910 are not yet being received by the proper collecting officers, are they?

A. No, I think not. I think they pay the taxes usually in December.

Q. I will ask you to examine these four tax receipts, for the years 1905, 1906, 1907 and 1908, both inclusive, and state if those are your receipts for taxes upon the land in question?

A. Yes, those are the ones.

(Testimony of Miss Elizabeth Kettenbach.)

Mr. COX.—We will ask to have these marked for identification.

Said receipts were thereupon pinned together, and marked by the Reporter as “Defendants’ Exhibit ‘M,’ for identification. (4 receipts.)”

Q. I will ask you to examine the three memorandum checks of the Idaho Trust Company which I now hand you, dated respectively December 20, 1906, December 14, 1907, December 26, 1908, and state if those are the checks drawn against your moneys upon deposit in the Idaho Trust Company for the payment of the taxes for the years for which the check is dated?

A. Yes, those are the checks; and prior to that time I paid the taxes myself. I think that will show, as I stated before, that first I paid them myself, and then later on they were paid for me, and those are the memorandum checks.

Mr. COX.—We will ask to have these marked for identification.

Said checks were thereupon pinned together, and were marked by the Reporter as “Defendants’ Exhibit ‘N,’ for identification.”

Q. Do you still have a checking account with the Idaho Trust Company?

A. No, not at present. I am keeping my account at the Lewiston National Bank.

Q. How long has your checking account been with the Lewiston National Bank? [1401—1071]

A. Since the consolidation of the Idaho Trust and the Lewiston National Bank. I don’t remember ex-

(Testimony of Miss Elizabeth Kettenbach.)

actly when that was. My account was transferred, and it is still there. I don't remember just exactly when it was.

Mr. COX.—Does the record show the date of the consolidation of the Idaho Trust Company with the Lewiston National Bank?

Mr. GORDON.—No; but you may show that, if you will.

Mr. BABB.—The consolidation might not indicate the date when any particular account was changed.

WITNESS.—No—that was what I was going to state, and I can't state precisely the date when the consolidation was.

Mr. BABB.—It was about July 1st, 1907, I think.

WITNESS.—But it was after the consolidation that my account was transferred.

Mr. BABB.—About July 1st, 1907, I think it was.

Mr. COX.—Q. As nearly as you can now state, Miss Kettenbach, your checking account was transferred from the Idaho Trust Company to the Lewiston National Bank some time after July, 1907?

A. Yes.

Q. Please examine the statements of the Idaho Trust Company in account with Miss Lizzie Kettenbach, dated respectively July 1st, 1904, August 2, 1904, November 3, 1904, and December 6, 1904, and state whether those are correct statements of your account with the Idaho Trust Company and the dates upon which they were delivered, if you know?

A. Yes, those are correct.

(Testimony of Miss Elizabeth Kettenbach.)

Mr. COX.—We will ask that these be marked for identification.

Said accounts were thereupon pinned together, and marked by the Reporter as “Defendants’ Exhibit ‘O,’ for identification.”

WITNESS.—I was going to say, in looking over those statements, that the money I could have paid my nephew a little before the time that I did, but I remember of him being away for quite a while, and [1402—1072] that was one reason it run on a little longer. He was gone for quite a while at that time out of the city.

Mr. BABB.—I would like to explain that there was no technical consolidation of the Lewiston National Bank and the Idaho Trust Company. The Idaho Trust Company acquired a majority of the stock of the Lewiston National Bank, and it ceased as fast as it could conveniently to receive any deposits other than savings deposits, and transferred deposits other than savings deposits to the Lewiston National Bank.

WITNESS.—Yes. Well, it was a term so generally used that I used it.

Mr. COX.—Q. Prior to July 1st, 1904, and until some time subsequent to July, 1907, did you continuously maintain an account with the Idaho Trust Company? A. I did.

Q. In your statement from the Idaho Trust Company, dated July 1st, 1904, there is an item, “Salary Warrant, \$50.00.” A. Yes.

Q. What is that, Miss Kettenbach?

(Testimony of Miss Elizabeth Kettenbach.)

A. That is the last of the—that is the June warrant, received for the month of June at the Normal School, and I deposited it on that date.

Q. That was your salary as Librarian?

A. Yes.

Q. In these statements reference is made to “Balance J. W. Billups interest coupon,” “C. A. House loan and interest,” “Interest on note of Edna McGrane,” are those items payments of interest and payments upon loans of your money?

A. Yes, sir.

Mr. COX.—We now offer in evidence the several documents identified by this witness, and marked by the Stenographer, from and including Exhibit “K” for identification, to and including Exhibit “O,” for identification, [1403—1073] in order to avoid recalling this witness. There is one thing that just occurred to me there: I don’t want to waive any question of the sufficiency of the evidence.

Mr. GORDON.—What do you mean by “sufficiency of the evidence?”

Mr. COX.—By offering them in evidence ourselves at this time.

Mr. GORDON.—I don’t understand exactly what you mean.

Mr. COX.—Well, I mean this: that if as to this particular entry, and this particular witness, or this particular defendant, your evidence is not sufficient to require us to proceed to proof—I don’t want to waive the right to raise that.

Mr. GORDON.—That wouldn’t make any differ-

(Testimony of Miss Elizabeth Kettenbach.)

ence in the trial of a case of this kind. It isn't like a jury case.

Mr. COX.—No, but it is a question that had not occurred to me before, as to whether we would waive it by offering it in this shape. We might agree that for the purpose of avoiding the recalling of this witness, that these should be considered as being offered in evidence, without, however, waiving any right to question in any form the sufficiency of the complainant's proof.

The SPECIAL EXAMINER.—Yes, I should think that would be sufficient.

Mr. GORDON.—You have offered these by the number of the exhibit, have you?

Mr. COX.—Yes.

Redirect Examination.

(By Mr. GORDON.)

Q. Miss Kettenbach, do you remember how much your share of your mother's estate was?

A. Why, I think that it was—the amount that I have stated before that I drew out or was sent out here—about \$4,500.00, I think.

Q. And to whom did you send that?

A. Well, I sent part of it out before I came to my brother Frank to invest or loan. After I came out I think I brought the rest with [1404—1074] me when I came out here. I think I sent him \$1,000.00, and then later on brought the other money that is loaned out here.

Q. Has your brother always made your investments for you?

(Testimony of Miss Elizabeth Kettenbach.)

A. Yes, he has always made the loans for me.

Q. He would make the loan, and then tell you he had made it, and charge it to your account?

A. Oh, yes, and the interest was, of course, always—

Q. You didn't bother yourself about it at all?

A. Not at all, no; I never bothered because I left it—

Q. Now, have you any other money invested now, or have you spent it?

A. Oh, no; I have it loaned out.

Q. It is in loans now? A. Yes, in loans.

Q. Do you know to whom the loans are made?

A. Yes, I know to whom.

Q. To whom?

A. Well, there is one to the—I think it is a company called the Peck Flume Company has a loan; and there is another one—Denny a man by the name of Denny has a loan.

Q. Now, this Peck Flume Company, is it an organized company? A. Oh, yes.

Q. Do you know who the president of that company is?

A. No, I don't know who the president is.

Q. Is Mr. Frank Kettenbach interested in that company?

A. He is interested in it, but I don't know that he is president. I never made any inquiries.

Q. He loaned that money for you to the company?

A. Yes, he loaned that money for me.

Q. These memorandum checks which you have

(Testimony of Miss Elizabeth Kettenbach.)

identified here, marked Defendants' Exhibit "N," you did not sign these checks yourself? [1405—1075]

A. No. They were paid from the Idaho Trust Company.

Q. And that is the way that the taxes were paid?

A. Yes, sir. That is, after the first two years. I think I paid them myself, and then I left it to the Idaho Trust Company to pay them whenever they came due. It saves me the trouble of doing it.

Q. They were paid and just charged up to your account?

A. Yes, they were charged to my account.

Q. Instead of you giving a check?

A. Yes.

Q. And these memorandum checks were put in by whoever docketed it?

A. Yes. I think Mr. Smith probably paid some of them.

Q. This one of December 14, 1907, I will ask you whether or not that is not made out and signed by Mr. Frank Kettenbach?

A. No, I think not. I don't think that is Frank Kettenbach's writing. It looks some like his writing, but I think that is Mr. Smith's; I couldn't say positively, but it isn't Frank's.

Q. The one of December 20, 1906, you think is Frank's?

A. Well, I think that is, but I wouldn't say positively. It looks more like his handwriting; but I know the other isn't.

Q. Miss Kettenbach, did you have any arrangement with any of your relatives that you would all

(Testimony of Miss Elizabeth Kettenbach.)

hold your claims in a bunch and sell them together?

A. No, sir, I never had any arrangement at all.

Q. These exhibits that have been identified here and offered as Exhibit "O," being your account with the Idaho Trust Company, when did you receive these papers?

A. Why, usually every month they sent them out.

Q. Did you receive these— A. Yes, sir.

Q. — in 1904?

A. Yes, sir; those were the papers that I received every month, [1406—1076] the statements from the bank.

Q. They are not statements that you have just gotten recently?

A. Oh, no. No, I have had all of them for all these years; I have kept them. They issued them monthly.

Q. And these tax receipts that are marked Defendants' Exhibit "M," were they sent to you?

A. Yes, sir.

Q. Just after the payments were made?

A. After the payments were made they were always returned to me. I took care of them myself.

Q. And you have had them in your possession ever since? A. Yes, always.

Q. Until you delivered them to your attorney?

A. To Mr. Cox, yes, sir.

Q. Have you a copy of the letter to which the letter from the Commissioner of the land office, which has been offered as Defendants' Exhibit "L," is an answer?

A. Did you say have I an answer to this letter?

(Testimony of Miss Elizabeth Kettenbach.)

Q. No; I say have you a copy of the letter to which this is an answer? A. A copy, you say?

Q. Yes? A. No. No, I haven't.

Q. Do you remember of ever seeing that letter?

A. No, I don't remember of seeing it.

Recross-examination.

(By Mr. COX.)

Q. The Mr. Smith to whom you referred as having filled in some memorandum checks offered in evidence, is Edward C. Smith, Secretary of the Idaho Trust Company? A. Yes, sir.

Mr. GORDON.—[1407—1077] Q. You are not sure whether they were filled out by Mr. Smith or not, are you?

A. No, I am not sure of that, but I just supposed so, because it looked a little bit like his handwriting. I have seen it, and that is why I said that. [1408—1078]

[**Testimony of Mrs. Martha E. Hallett, for Complainant.**]

Mrs. MARTHA E. HALLETT, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Martha E. Hallett? A. I am.

Q. And where did you reside in 1904, Mrs. Hallett?

A. In Lewiston, Idaho.

Q. What part of Lewiston?

A. Well, I may not know my directions,—

(Testimony of Mrs. Martha E. Hallett.)

Q. Well, I mean were you living on the hill in Lewiston? A. No.

Q. And were you living with anyone at that time?

A. I was keeping house for myself.

Q. And did you know Mr. George H. Kester?

A. Yes.

Q. Was he living with you at that time?

A. He boarded with me, and I think at that time he and his wife were boarding with me.

Q. Well, did you live with him prior to that time?

A. I never lived with him. I think at one time I boarded and had my rooms in Mr. Kester's home, but at this time I had the house rented and they were boarding with me, he and his wife. I think that was the year—there was different times.

Q. Were there any other persons boarding with you except Mr. Kester and his wife?

A. I think not. At one time Mr. Albert Osborn boarded with me, but I think at that time he didn't.

Q. But I mean you were not running a boarding-house?

A. Oh, no; just taking two or three that I could do for myself.

Q. And you just had as many boarders as you could conveniently—[1409—1079]

A. As a rule only Mr. Kester and his wife, and Mr. Osborn when his mother wasn't here.

Q. I understand you had as many boarders as you could conveniently do the work for yourself; is that correct? A. Yes, that's true.

Q. Did you own the property which you—

(Testimony of Mrs. Martha E. Hallett.)

A. I did not.

Q. Did you own any property in Lewiston?

A. No, sir, not at that time.

Q. Anywhere else? A. I don't think so.

Q. And do you remember who first spoke with you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to her taking up a timber claim, in so far as it relates to bills No. 388 and 407, upon the ground and for the reason that the entry of the witness is not involved in these two particular actions, and the evidence is irrelevant and immaterial.

WITNESS.—Why, I think it was myself. No one spoke to me about taking up a timber claim, for no one ever broached it to me, but I myself broached it to different ones.

Mr. GORDON.—Q. Did you ever talk to Mr. Kester about it?

A. I never did; that is, to any amount. I think I told them when they were going to the timber that I would like to go with them, but I hadn't spoken to him before.

Q. You hadn't spoken to him before?

A. No, not to him.

Q. Did you ever talk to Mr. Kettenbach about it?

A. I never did.

Q. Now, who made the arrangements for you to go to the timber? [1410—1080]

A. Well, there was no—I will have to think how I will answer that. Did you want to know who I first

(Testimony of Mrs. Martha E. Hallett.)

spoke to about going to the timber?

Q. Yes; I want to know all about it.

A. Well, I spoke to a gentleman first who roomed with me and told him I had the fever and wanted a claim.

Q. You had what?

A. I said I wanted a timber claim and I spoke with a gentleman who roomed with me first, and asked him if he thought I could take a claim, and he said "I think you can, Mrs. Hallett," but he and I never spoke any more about it at that time; and then afterwards when I knew everybody was taking claims I remember I asked all my friends if they knew any way that I could take up a timber claim, and so I knew they intended going, and I asked if I could go with them, and they of course at first thought it would be a hard trip for me, but I told them I could stand it, and I thought I wanted a timber claim, and—

Q. And you went with the party, did you?

A. I went with the party, yes, sir.

Q. With whom did you go?

A. I went with Mr. and Mrs. Kester, and Mr. and Mrs. White, and Elizabeth Kettenbach, and myself.

Q. And did Mr. Kester conduct that party?

A. Well, I don't know.

Q. Now, who bought the railroad tickets for the party?

A. Well, I couldn't say. I think I paid my fare, but the rigs I think they arranged for, of course, the gentlemen of the party did, and Mr. White; I

(Testimony of Mrs. Martha E. Hallett.)

couldn't say who did it.

Q. And do you remember whether Mr. White and Mr. Kester bought all the tickets for the party?

A. I couldn't say. You know I only know my own part of it.

Q. Well, do you know how much your part of it was that you paid?

A. I couldn't tell you now, I don't think, what my expenses were. [1411—1081]

Q. Did you pay any of it?

A. Why, certainly I paid all my own expenses, Mr. Gordon?

Q. And you don't remember exactly what the expenses were?

A. Well, I couldn't say exactly; my hotel, and railroad fare.

Q. And how long were you gone from Lewiston?

A. Well, I couldn't tell you exactly. I think we went to Orofino by rail, and if I remember correctly we went from there in a rig to Pierce.

Q. It took you four or five days away from Lewiston?

A. I think perhaps something like that. I don't remember just how many days, Mr. Gordon.

Q. And do you remember who located you?

A. Mr. Dwyer located me.

Q. And do you know how much the expense of taking up the whole timber claim was?

A. I don't think I could tell you. I know what I paid my locator.

Q. Now, how much did you pay your locator?

(Testimony of Mrs. Martha E. Hallett.)

A. I paid him \$100.00 for locating me.

Q. And when did you pay that?

A. Well, I paid it shortly before I proved up, I think.

Q. The same day?

A. I couldn't tell you, but it was between my—

Q. Filing?

A. — filing and my final proof, because I had to pay him before I could prove up.

Q. Wasn't it the same day you made proof?

A. I couldn't say. I don't remember.

Q. Do you remember how much it was?

A. Yes; it was \$100.00.

Q. How long before you located on the claim did you go over the land? [1412—1082]

(No answer.)

Q. How long before you filed on the land did you view the land?

A. It was in the fall; I think it was in October.

Q. Do you know why you didn't file immediately after you returned?

A. I am not sure of this, but it seems to me that it was not ready for filing until towards spring.

Q. Do you remember who prepared your filing papers for you?

A. Let's see—my filing papers? Those when I went to file?

Q. Yes. A. My attorney, I think.

Q. Who was your attorney?

A. Well, I. N. Smith at that time I think was my attorney.

(Testimony of Mrs. Martha E. Hallett.)

Q. And had he been your attorney in other matters?

A. In different things, yes, he had been employed by me.

Q. Do you know whether you paid him any fee for preparing your filing papers?

A. I certainly did.

Q. About how much?

A. I don't think I paid him that day, you know. He did other things for me, and I am not sure that I paid him anything on that day.

Q. Do you remember how long you were at the land office before you filed? Did you get to the land office the day that you made your filing?

A. I don't think I understand you.

Q. I say, do you remember what time of the day it was you got to the land office that you made your filing? A. I don't.

Q. Was it in the morning or in the afternoon?

A. I don't think I could tell you whether I went there in the forenoon or afternoon. [1413—1083]

Q. Do you remember whether there was a crowd there on that occasion.

A. I know there was several people; I don't know how many.

Q. Well, you didn't go there until the day you filed, did you? A. Yes.

Q. How?

A. I certainly must have. Do you want me to tell you what I think? This is what I think, you know.

(Testimony of Mrs. Martha E. Hallett.)

Q. Well,—

A. I think after we knew that it was to be open I think I went up every day for some time.

Q. You went up every day for some time?

A. Yes. I was just trying to think about this filing, what it was, you know.

Q. Did you stand in line there several days before you filed? A. Yes, sir, I did.

Q. All night, too? A. No.

Q. Now, who held your place in line at night?

A. My son and his wife was with me, and they was taking turns.

Q. And when you went there to file, was your son and daughter in law in line to take your place?

A. I couldn't tell you about that.

Q. Did any of them stand in line?

A. Well, I couldn't tell you that. I know some of them were there during the day, and as I tell you, my son or his wife took their turns during the day, but at night I couldn't tell you.

Q. And do you remember how much you paid in the land office when you made your filing?

A. I don't know as I know exactly, but it seems to me that it was something like \$7.00 or \$8.00. I am not sure, Mr. Gordon. [1414—1084]

Q. Did you have any bank account at that time?

A. I had money in the Lewiston National Bank.

Q. You had what?

A. Money in the Lewiston National Bank.

Q. Was it on deposit?

A. I am not positive whether I had a checking

(Testimony of Mrs. Martha E. Hallett.)

account, but I had my own money there.

Q. Well, now, but did you have a checking account? A. I am not sure.

Q. Now, how was your money at the bank?

A. I couldn't tell you positively. There were times when I had a checking account; sometimes I had more money and sometimes I had less, and sometimes I had a checking account and sometimes I had a deposit, and I don't remember how my account was at that time.

Q. Well, did you have a checking account at the bank at the time you made your filing?

A. I couldn't say now.

Q. Did you have one at the time you made your final proof?

A. I couldn't say now. I know I had the money in the bank, but I couldn't tell you, Mr. Gordon.

Q. Well, do you remember how you got it out of the bank at the time you made your final proof?

A. Why, I went to the bank and got the money. I think I got it from Mr. Kester, who was cashier; but whether I made out a check or whether it was in the form of a deposit I couldn't tell you, Mr. Gordon.

Q. You know you got it from Mr. Kester that morning? A. Well, I suppose—I think I did.

Q. Well, don't you remember?

A. Yes, I think it was he that waited on me, because he was usually at the cashier's window.

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